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ABBREVIATED MANUAL
OF
MILITARY LAW.



WAR OFFICE, PALM MALL,

1888.



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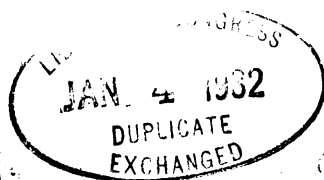
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PREFACE.

THE preface to the original edition of the *Manual of Military Law*, published in May, 1884, stated that "an abbreviated edition of the work, in the form of a practical *Manual*, will be issued as soon as possible."

A work of the character contemplated by the above paragraph was beset with so many difficulties, that it was abandoned in favour of the simpler plan of merely reprinting those portions of the *Manual of Military Law* which are of most practical importance to regimental officers.

They are reprinted in the present volume without alteration.

The re-printed chapters are re-numbered, and references to them are made according to that re-numbering. References to the chapters of the *Manual* which are not reprinted, are made by reference to the chapter as numbered in the *Manual*, with the prefix of "*M.M.L.*"

February, 1888.

NOTE.—In a work covering so much ground there must inevitably be errors; any corrections or suggestions will be gratefully received; they should be addressed to—

"The Editor,
(*Manual of Military Law*),
Care of the Under Secretary of State,
War Office, S.W."

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LIST OF ABBREVIATED REFERENCES.

The letters, "M.M.L.," or the words "Manual of Military Law," refer to the complete edition of the Manual published in November, 1887.

Car. & Marsh.	..	Carrington & Marshman's Reports.
C. & P...	..	Carrington & Payne's Reports, 9 vols., 1823-41.
Clode Mil. Forces	..	Clode's Military Forces of the Crown, 2 vols., 1869.
Cox Crim. Ca.	..	Cox's Criminal Cases.
Hawkins	..	Hawkins' Pleas of the Crown, 2 vols., 6th edition, 1777.
L.R., Ch. Div.	..	Law Reports, Chancery Division.
L.R., C.C.R.	..	Law Reports, Crown Cases Reserved.
L.R., Q.B.D.	..	Law Reports, Queen's Bench Division.
Lewin, C.C.	..	Lewin's Crown Cases.
Moo. C.C.	..	Moody's Crown Cases Reserved.
Steph. Dig. Ev.	..	Digest of the Law of Evidence, by Sir James Fitzjames Stephen, K.C.S.I., 3rd edition, 1877.
Taunt...	..	Taunton's Reports (Common Pleas, 1807-19), 8 vols.

CHAPTER I.

CHAPTER III. IN MANUAL OF MILITARY LAW.

CRIMES AND SCALE OF PUNISHMENTS.

1. Part I of the Army Act classifies under various heads the military offences formerly contained in the Mutiny Act and Articles of War. It includes all the offences for which officers or soldiers in their military capacity are punishable by a court-martial, with the exception of those relating to taking money for commissions (a). Classification of military offences.

2. The principle adopted in classifying the strictly military offences is that of grouping together offences of a similar character, and ranging the various groups as between themselves in a manner intended to impress the soldier with their relative military importance. For example, the Act begins with *Offences in respect of Military Service* (ss. 4-6), and these are followed by the heading *Mutiny and Insubordination* (ss. 7-11), by way of showing that gross misbehaviour in the field, mutiny and insubordination, rank first among military crimes. The above headings are followed by— Principle of classification.

Desertion, Fraudulent enlistment, and Absence without leave (ss. 12-15);

Disgraceful conduct (ss. 16-18);

Drunkenness (s. 19);

Offences in relation to Prisoners (ss. 20-22);

Offences in relation to Property (ss. 23, 24);

Offences in relation to False Documents and Statements (ss. 25-27);

Offences in relation to Courts-martial (ss. 28, 29);

Offences in relation to Billeting (s. 30);

Offences in relation to Impressment of Carriages and their Attendants (s. 31);

Offences in relation to Enlistment (ss. 32-34);

Miscellaneous Military Offences (ss. 35-40);

Lastly come *Offences punishable by ordinary Law* (s. 41) of which the most serious are only triable by courts-martial under certain circumstances and subject to certain restrictions (b).

(a) Army Act, s. 155.

(b) See M.M.L. Chapter VII.

Offences
dealt with
in this
chapter.

3. For the most part the military offences are laid down by the Act in the same, or nearly the same, language as that of the former Mutiny Acts and Articles of War. Those which from their importance or comparative frequency require a more detailed notice than others, are dealt with in this chapter: the rest are explained, so far as necessary, in notes to the Act.

Definition of
mutiny.

4. *Mutiny and Insubordination.*—The term “mutiny” implies collective insubordination, or a combination of two or more persons to resist or to induce others to resist lawful military authority. A man cannot be charged generally with mutiny, or with an act of mutiny, but only with some one or more of the specific crimes laid down in s. 7. If he has not brought himself within the terms of that section, his offence, however much it may tend towards mutiny, must be dealt with as insubordination, under s. 8 or s. 9, which afford ample powers for the purpose. Thus, where there is an actual mutiny or a conspiracy to mutiny, all concerned in the mutiny or conspiracy can be tried under s. 7 for causing or conspiring to cause, or joining in the mutiny, as the case may be. If no mutiny or conspiracy exists, a man can only be tried under s. 7 on a charge of endeavouring to persuade some person in Her Majesty’s forces or in the navy to join in an intended mutiny, or of failing to inform his commanding officer of an intended mutiny.

Framing
charge of
mutiny.

5. In framing a charge therefore under s. 7, the specific act or acts which constitute the crime must always be alleged; and the crime is so grave that a charge for it should only be brought on very clear evidence. Cases of insubordination, even on the part of two or more, should, unless there appears to be a combined design on their part to resist authority, be charged under s. 8 or s. 9. If an insubordinate act were committed which could not be charged under any of the sections of the Act relating to mutiny and insubordination, it must be charged under s. 40 as an act to the prejudice of good order and military discipline. Provocation by a superior, or the existence of grievances, is no justification for mutiny or insubordination, though such circumstances would be allowed due weight in considering the question of punishment.

Definition of
sedition.

6. Sedition in s. 7 of the Act is the same crime as in the ordinary criminal law, and consists in the bringing into hatred or contempt, or exciting disaffection against, the Sovereign, or the government and constitution of the United Kingdom, or either House of Parliament, or the administration of justice; or in the exciting Her Majesty’s subjects to attempt to procure otherwise than by lawful means the alteration of the law, or in raising discontent and disaffection among Her Majesty’s subjects, or in pro-

moting feelings of ill-will and hostility between different classes of such subjects. A person is not guilty of sedition who acts in good faith, merely intending to point out errors or defects in the government or constitution or the administration of justice, or to promote alteration of the law by legal means, or to point out, with a view to their removal, matters which have a tendency to produce feelings of hatred between different classes of Her Majesty's subjects. It is not, however, intended to imply that an officer or soldier is at liberty to enter on any such course of action or discussion, but simply to point out the legal meaning of the term sedition.

7. Closely connected with the offence of mutiny is the offence of disobedience to a lawful command, which is punishable under s. 9 of the Act (a). No offences differ more in degree than offences of this class. The disobedience may be of a trivial character, or may be an offence of the most serious description, amounting, if two or more persons join in it, to mutiny. Accordingly the object of this section is to enable charges to be framed in such manner as to discriminate between different degrees of the offence.

Offence of disobedience to a lawful command.

8. The essential ingredients of the first and graver offence under the section are that the disobedience should *show a wilful defiance of authority*, and should be disobedience of a lawful command *given personally and given in the execution of his office by a superior officer*; in fact, it would ordinarily be such an offence as would be mutiny if two or more persons joined in it. In order to convict a man it must be shown; (1.) that a lawful command was given by a superior officer; (2.) that it was given personally by such officer; (3.) that it was given by such officer in the execution of his office (b); (4.) that the man disobeyed it, not from any misunderstanding or slowness, but so as to show a wilful defiance of his superior officer's authority. For example, a man at shot drill, not lifting the shot when ordered to do so by his non-commissioned officer, may have failed to hear the order or may be merely slow in executing it; on the other hand, the refusal may be deliberate and obstinate, so as to show in the clearest manner an intention to defy and resist superior authority.

Definition of graver offence of disobedience.

9. The second and less grave offence laid down by the section consists of disobedience to any lawful command given by a superior officer, which is not accompanied by the essential ingredients of the graver offence. To constitute this offence it is essential that the disobedience

Of less offence of disobedience.

(a) For the history of this enactment, see Clode, Mil. Forces, i. p. 155.

(b) As to meaning of "in the execution of his office," see note to section 8.

should be wilful and deliberate, as distinguished from disobedience arising from forgetfulness or misapprehension, which can only be punished under s. 40. The disobedience must have reference to the time at which the command is to be obeyed. If the command be a lawful command and demands a prompt and immediate compliance, hesitation or unnecessary delay in obeying it may constitute disobedience fully as much as a positive refusal to obey, though mere omission or hesitation can seldom constitute the graver offence referred to in the preceding paragraph; but if the command is of a prospective nature a man, before he can be guilty of disobedience, must have had an opportunity to obey the command. For example, if the command is to turn out for parade in half an hour, then, until the expiration of that time, no offence of disobedience to a lawful command can be committed. If the soldier on receiving the command makes a reply implying an intention to refuse, and is put in the guard-room before the end of the half hour, he may be charged under s. 8 with using insubordinate language; or under s. 40 with using improper language, but not with the offence of disobedience to a lawful command.

What is a
lawful com-
mand.

10. "Lawful command" means not only a command which is not contrary to the ordinary civil law, but one which is justified by military law; in other words, a lawful military command, whether to do, or not to do, or to desist from doing, a particular act. A superior officer has at any time a right to give a command, for the purpose of the maintenance of good order, or the suppression of a disturbance, or the execution of any military duty or regulation, or for any purpose connected with the amusements and welfare of a regiment or other generally accepted details of military life. But a superior officer has no right to take advantage of his military rank to give a command, which does not relate to military duty or usages, or which has for its sole object the attainment of some private end. Such a command, though it may not be unlawful, is not such a lawful command as will make disobedience to it criminal. In any case of doubt, the military knowledge and experience of officers will enable them to decide on the lawfulness or otherwise of the command.

Duty of
obedience.

11. If the command were obviously illegal, the inferior would be justified in questioning, or even in refusing to execute it, as for instance, if he were ordered to fire on a peaceable and unoffending bystander. But so long as the orders of the superior are not obviously and decidedly in opposition to the law of the land, or to the well-known and established customs of the army, so long must

they meet prompt, immediate, and unhesitating obedience (a).

12. Religious scruples, however *bona fide* they may be, afford no justification for neglect or refusal to obey orders. An officer cannot (for example) plead conscientious scruples as justifying a refusal to go into the trenches on a Sunday, or to pay marks of respect enjoined by superior authority to a religion different from his own. Religious scruples.

13. *Desertion, Fraudulent Enlistment, and Absence without leave.*—A distinction is made by the Act between desertion and fraudulent enlistment. The latter, which is constituted a separate offence by s. 13, is dealt with hereafter. Desertion and absence without leave.

The criterion between desertion and absence without leave is *intention*. The offence of desertion—that is to say, of deserting or attempting to desert Her Majesty's service (b)—implies an intention on the part of the offender either not to return to Her Majesty's service at all, or to escape some particular important service as mentioned in para. 16; and a soldier must not be charged with desertion, unless it appears that some such intention existed. Further, even assuming that he is charged with desertion, the court that tries him should not find him guilty of desertion, unless fully satisfied on the evidence that he has been guilty of desertion as above defined. On the other hand, absence without leave may be described as such short absence, unaccompanied by disguise, concealment, or other suspicious circumstances, as occurs when a soldier does not return to his corps or duty at the proper time, but on returning is able to show that he did not intend to quit the service, or to evade the performance of some service so important as to render the offence desertion.

14. It is obvious that the evidence of intention to quit the service altogether may be so strong as to be irresistible, as, for instance, if a soldier is found in plain clothes on board a steamer starting for America, or is found crossing a river to the enemy; while, on the other hand, the evidence is frequently such as to leave it extremely doubtful what the real intention of the man was. Mere length of absence is, by itself, of little value as a test, for a soldier who has been entrapped into bad company through drink, or other causes, may be absent some time without any thought of becoming a deserter; but in the case above put, of a soldier found on board a steamer starting for America, there could be no doubt of the intention, though he might only have been absent a few hours. Evidence of intention not to return.

(a) See s. 9 of the Army Act, and note.

(b) See s. 12 of the Army Act, and note.

Distance
by itself
criterion.

15. Nor can desertion invariably be judged by distance, for a soldier may absent himself without leave and depart to a very considerable distance, and yet the evidence of an intention to return may be clear; whereas he may scarcely quit the camp or barrack yard, and the evidence of intention not to return (by the assumption of a disguise, for example, and other circumstances) may be complete.

Evasion of
important
service.

16. A man who absents himself in a deliberate or clandestine manner with the view of shirking some important service, though he may intend to return when the evasion of the service is accomplished, is liable to be convicted of desertion just as if an intention *never* to return had been proved against him. Thus if a man, on the eve of the embarkation of his regiment for foreign service, or when called out to aid the civil power, conceals himself in barracks, the court will be quite justified in presuming an intention to escape the important service on which he was ordered, and in convicting him of desertion.

Desertion by
man on
furlough.

17. A man may be a deserter though his absence was in the first instance legal (*e.g.*, being authorised by leave on furlough), the criterion being the same in all cases, namely, the intention of not returning. It is clearly shown by the Queen's Regulations, 1885, and by the explanation on the furlough itself, that a soldier on furlough is still under orders, and that if, without leave, he quits the place to which he has permission to go, or if he disguises or conceals himself so that orders cannot reach him, or if he goes on board a ship about to sail for a distant port, he is liable to be tried and convicted of desertion, though on furlough at the time. A soldier, for example, at Ipswich who obtains a pass to Bristol, and during his leave when without permission to go to Liverpool is found there in civilian costume on board a ship about to sail for New York, may be tried for desertion. It would be for him to show that the absence without leave from Bristol proved against him, was innocent, and had nothing to do with desertion.

Attempt to
desert.

18. If a soldier commits an act which is apparently a prelude to, or an attempt at, desertion, although no actual absence can be proved, as if he is caught in the act of slipping past a sentry, or climbing over a barrack wall in plain clothes, he should be tried for an attempt to desert.

Soldier sur-
rendering
himself.

19. The fact that a soldier surrenders, is not proof by itself that he intended to return, even though he is in uniform at the time of surrender. The prosecutor may not be able to prove where the man has been during his absence, but evidence that the military patrols had

searched carefully in the neighbourhood of the barracks without finding him, would show that he must have gone to a distance or concealed himself. From this and other circumstances the court may infer that he surrendered because he could not effect his contemplated escape.

20. A prisoner charged with desertion may be found guilty of attempting to desert or of being absent without leave; and, on the other hand, a prisoner charged with an attempt to desert may be found guilty of actual desertion, or of being absent without leave (a). In any case of doubt as to whether one or the other offence has been committed, the court should find the prisoner guilty of the less offence. A soldier guilty of desertion forfeits all his prior service, and is liable to serve for the term of his original enlistment, reckoned from the date of his conviction, or of the order dispensing with his trial (b).

General provisions as to desertion.

21. As a general rule, a soldier quitting his regiment and enlisting in another should not be charged with desertion, but with fraudulent enlistment, for the very act of his enlisting in another regiment (unless in an exceptional case) shows that he did not intend to leave Her Majesty's service. On the other hand, if he does so for the purpose of avoiding a particular service—e.g., service abroad—or if during his absence he conducted himself so as to show that when he quitted he did not intend to return to the service, but changed his mind—he is, as above pointed out, guilty of desertion, and may be tried accordingly. But as already observed, it will suffice, except in very special cases, to prefer a charge for fraudulent enlistment alone.

Fraudulent enlistment.

22. *Stealing and Embezzlement.*—Ordinary thefts from civilians are left by the Act to be dealt with by the civil courts, or they may be tried by court-martial under s. 41 as civil offences; but the offence of stealing or embezzling the money or property of an officer or soldier or of any military institution has, in accordance with long-established practice, been made expressly punishable as a military offence (c).

Stealing and embezzlement, when tried by court-martial.

23. Stealing from a comrade is regarded as peculiarly disgraceful, seeing that in the daily routine of barrack life, soldiers must constantly leave their arms, accoutrements or kit exposed, as well as private property, such as money, watches, pipes, &c., trusting to the honour of their comrades. When missing articles are private property, and are found in the possession of another, there is

Stealing from a comrade.

(a) See s. 56 (3), (4).

(b) As to court of inquiry, in case of absence without leave exceeding twenty-one days, see s. 72; and as to procedure in case of confession of desertion or fraudulent enlistment, see s. 73.

(c) Theft from a comrade will as a rule be tried by court-martial. Q R., 1885, Sect. VI, para. 73.

a strong presumption that they were stolen, especially if the accused absented himself, and is discovered to have pawned or sold them. But it must be recollected that an intention to steal is essential, and that the mere taking of an article without that intent is not criminal. So that if a soldier openly takes an article belonging to another, and returns it, or though he absented himself, did not secrete the article or make any attempt to sell or pawn it, then the presumption is against his being guilty of stealing. It will often be desirable to obtain evidence as to any custom of borrowing which may have prevailed in a particular room, or as between the accused and the owner of the article or other comrades, and as to any other circumstance tending to show whether the accused might reasonably have supposed that his taking the article would not be objected to. The restoration of an article does not of course by itself prove that the article was not stolen, but evidence of the above nature will often go far to show whether an article was in fact stolen or not. Again, the accused may show that he obtained the articles in a *bonâ fide* transaction, or that he found them, apparently without an owner, and without any name or mark on them by which the owner could be found. The fact of lost articles being found in the valise, or in the bed of a soldier, is not by itself proof that he stole the articles. They might have been put there unknown to him, perhaps intentionally by the real thief. A soldier should not in such a case be tried for stealing unless there are other circumstances from which it might be inferred that the articles were in his valise or bed with his knowledge. Evidence that a soldier was a suspected thief, or that he had on previous occasions stolen other articles from other comrades, is not admissible to show that he had anything to do with a particular theft. The improper possession by one soldier of a comrade's necessaries, where there is no evidence of theft, is a different question: it is not an offence against the comrade, but is an offence against military rules, and may irrespectively of any fraudulent intent be punished under s. 40.

Embezzlement.

24. The offence of embezzlement under the Act is committed where one entrusted with the care or distribution of public or regimental money or property, and being thus in lawful possession of it, appropriates it to the use of himself or of some person connected with him (a). A subordinate is frequently tempted to commit the offence, if he finds that his transactions are not regularly supervised, and that minor irregularities pass unnoticed. All officers, therefore, who

(a) See s. 17 and note; and as to embezzlement generally, see M.M.L., Chapter VII, p. 151. As to order by confirming authority or Commander-in-Chief, for restitution of stolen or embezzled property, see s. 75.

have to do with the supervision of canteens or the accounts of pay sergeants or other non-commissioned officers, should be most careful to see that the forms and regulations of the service are strictly and invariably observed. Nothing can be more unjust and inexcusable than for an officer through indolence or carelessness in doing his own duty, to expose a soldier to temptation which may prove his ruin.

25. *Drunkenness.*—Drunkenness includes intoxication from the effects of opium or any similar drug as well as from liquor. Under the Army Act, an officer should be tried for the specific offence of drunkenness, whether on duty or not on duty, as the case may require, instead of being charged, as formerly, in the case of drunkenness not on duty, with conduct unbecoming the character of an officer and a gentleman. Drunkenness.
Of officer.

26. A non-commissioned officer, no less than a commissioned officer, may be tried by a court-martial for even a single act of drunkenness, whether committed on duty or not on duty. The commanding officer has, however, complete discretion whether to send the offence for trial or not, as the obligation of dealing summarily with a private soldier guilty of simple drunkenness under certain circumstances, does not extend to the case of a non-commissioned officer (a). Of non-commissioned officer.

27. A private soldier also can be tried for any act of drunkenness, whether on duty or not on duty, by a court-martial under s. 19; but the practical effect of this section is materially modified by s. 46, which declares, that the commanding officer shall deal summarily with the case of a soldier charged with drunkenness not on duty, unless he has been guilty of drunkenness on not less than four occasions in the preceding 12 months, or unless the offence is one of aggravated drunkenness within the meaning of s. 44 of the Act, *i.e.*, of drunkenness after being warned for duty, or of being found by reason of drunkenness unfit for duty. Although therefore under s. 19 courts-martial have complete jurisdiction to try and punish simple drunkenness, and this jurisdiction is not limited by s. 46, yet a commanding officer will be guilty of a grave breach of duty and of an offence against the Act, if he disregards the directions in s. 46 with respect to dealing summarily with simple drunkenness of a private soldier (b). If the number of instances of drunkenness recorded against a private soldier within 12 months amounts to eight, he is as a rule to be tried: if the number is between four and Jurisdiction of courts-martial to try drunkenness of private soldier.

(a) *Ss.* 46, 183 (1).

(b) *See Q.R.*, 1885, *Sect.* VI, paras. 51–59.

eight, it is optional with the commanding officer to try him or to dispose of the case summarily (a).

Drunken-
ness of
soldier on
duty.

28. In a military point of view, the offence of being "drunk on duty" is considered in reference to the soldier being fit or not fit for duty. There cannot be any distinction such as drunk, or very drunk, when on duty. Soldiers therefore are carefully inspected before being put on duty, so as to ascertain their fitness. If the superior, knowing a man to be drunk, out of good nature allowed him to proceed with the duty, or if through carelessness he passed a man as sober when he was not sober, then it would be desirable as a rule to try the man for being drunk, and not for being drunk on duty.

A soldier on the line of march is on duty from the beginning to the end of the march, and if drunk in his billet or halting place, may, if necessary, be tried for being drunk on duty.

Drunken-
ness of
soldier after
being warned
for duty.

29. Although a soldier found to be drunk when required for any duty for which he has been duly warned, can only be charged with drunkenness, and not with drunkenness on duty, yet as the Act declares the offence to be aggravated drunkenness, punishment may be awarded as if it were drunkenness on duty. On the other hand, in ordinary routine circumstances, a soldier unexpectedly called on to perform some duty, for which he had not been warned—as (for example) if summoned from a canteen or from some public sports—and found to be unfit for duty, should in practice be dealt with as for simple drunkenness, although legally the offence may be one of aggravated drunkenness.

Drunkenness
of a soldier
not on duty.

30. In the offence of simple drunkenness, there are practically various grades, for the purpose of the amount of punishment; and evidence should be given as to the circumstances of the drunkenness, and as to whether the drunken man was riotous or not, so that punishment may be apportioned accordingly. Nothing can justify a soldier striking or offering violence to a superior, and great care is therefore enjoined to be taken to avoid bringing drunken soldiers in contact with their superiors. Mere abusive and violent language used by a drunken man, as the mere result of being taken into custody, should not be used as a ground for framing a charge of using threatening or insubordinate language to a superior officer. If a court-martial be required at all, discipline will generally be upheld by merely bringing the man to trial either for drunkenness (if he is liable to be tried) or for an offence under s. 40, treating the language merely in the nature of riotous conduct, and to that extent aggravating the offence.

31. Drunkenness often has to be considered by courts-martial not as an offence itself, but in relation to greater crimes, which it accompanies. It is a principle of English law that drunkenness is no excuse for crime. But where intention is of the essence of the crime, drunkenness may justify a court-martial in awarding a less punishment than the crime would otherwise have deserved, or reduce the crime to one of a less serious character. Thus if an ordinarily steady respectful man commits himself when drunk by the use of insubordinate language, it may be clear that he did not really intend to be insubordinate; and though the offence cannot be passed over, yet a more lenient punishment will meet the justice of the case, than if the same man had used the same language deliberately when sober. So, too, acts, which if done deliberately would show a wilful defiance of authority, may, if the man were drunk, be regarded as amounting only to the less offence of simple disobedience. So, too, if it should appear that a man absented himself under circumstances which might ordinarily show an intention of not returning, was drunk, the court would be justified in treating the absence as a mere drunken frolic, and finding the man, though charged with desertion, guilty of absence without leave. So again, a man so-drunk as to be incapable of attending parade, should be charged with drunkenness rather than with an offence under s. 15 (2) of the Act

Drunkenness considered in relation to other crimes.

32. The remaining sections of this part of the Act relating to military offences do not call for special notice in this chapter, with the exception of the proviso to s. 40 ("Conduct to prejudice of military discipline"), which provides that no charge shall be made under that section, for an offence which is a specific offence under any other provision of the Act, and is not a civil offence; although the conviction of a person so charged is not necessarily invalidated. Before then an offender is charged under this section, the convening officer must satisfy himself not only that the act, conduct, disorder, or neglect is to the prejudice of good order and military discipline, but also that it is not any one of the offences specifically punishable under the Act. Attempts to commit offences specified in the Army Act are not, with one or two exceptions, specifically made offences, and therefore can be tried under this section. But civil offences, *e.g.*, frauds, should not be tried under this section.

Conduct to prejudice of military discipline.

33. An important distinction is made by the Act, in that certain offences are punishable more severely when committed on active service (a) than at other times. Instances of this distinction will be found in sections 6, 8, 9,

Offences committed "on active service."

(a) For the definition of "active service," see s. 169.

and elsewhere. A sentinel, for example, found asleep or drunk on his post, while on active service, would be liable to suffer death if the character and circumstances of the offence were sufficiently grave, while if he were not on active service he could at the utmost be sentenced to imprisonment (a). Supposing the evidence on the trial to prove that an offence charged as having been committed on active service was committed not on active service, the offender may be found guilty of the latter offence only, and be sentenced accordingly to the less punishment (b).

34. Jurisdiction is given by s. 41 to courts-martial to try ordinary civil crimes, from murder and treason downwards, when committed by persons subject to military law. The limitations on the exercise of this jurisdiction, and the other provisions of the section are explained in M.M.L., Chapter VII; which also contains for the information of officers who may have to try such crimes, a short statement of the law relating to them.

35. Having laid down the offences, the Act enacts (s. 44) a scale of punishment for officers and soldiers respectively. With two exceptions, each particular offence laid down in the Act has a *maximum* punishment assigned to it; and then, by s. 44, provision is made enabling a court-martial to award a less punishment. If, for example, the maximum punishment assigned to an offence is penal servitude, either imprisonment or any one of the punishments lower in the scale for officers and soldiers respectively, can be awarded in its place. The punishments named in the Act for each particular offence are *maximum* punishments, and a maximum punishment is only intended to be imposed when the offence committed is the worst of its class, and is committed by an habitual offender, or is committed under circumstances which require an example to be made. The two exceptions from the above rule are the offence of behaving in a scandalous manner unbecoming the character of an officer and a gentleman, in which case the only punishment is cashiering; and the civil offence of murder, in which case death is the only punishment.

36. The Army Act, 1881, as a substitute for the formerly existing power of inflicting corporal punishment, enacted (s. 44) that a court-martial may award for an aggravated offence of drunkenness, or of disgraceful conduct, or for any offence punishable with death or penal servitude, committed by a soldier on active service, such summary punishment other than flogging, as may be directed by rules made by a Secretary of State. The rules made in

Offences
punishable
by ordinary
law.

Scale of
punish-
ments.

Summary
punish-
ments.

(a) Army Act, s. 6 (1) (k).

(b) Army Act, s. 56 (5).

pursuance of the above enactment, which will be found at p. 551, must be referred to for further details on this subject.

37. It may be added here that a return of military offenders, containing the names and descriptions of men discharged for misconduct or struck off the strength as deserters, is required to be forwarded monthly by commanding officers to the Adjutant-General; and from these returns a "general register of military offenders" is compiled (a). Register of military offenders.

38. In conclusion must be noticed the power of Her Majesty, under s. 69, to make Articles of War for the better government of officers and soldiers. Such Articles may be made applicable to officers and soldiers at home or abroad, and must be judicially noticed by all judges, and in all courts. The penalty of death or penal servitude cannot be imposed by an Article of War, except for a crime expressly made liable to such punishment by the Act itself; nor can an Article of War render any crime punishable under the Act liable to be punished in a manner which does not accord with the provisions of the Act. The enumeration of offences in the Act is so complete, that the necessity for the exercise of the power of making Articles of War for the purpose of creating offences would appear improbable. Articles of War.

(a) Q.R., 1885, Sect. VI, paras. 153a-c.

CHAPTER II.

CHAPTER IV. IN MANUAL OF MILITARY LAW.

ARREST: INVESTIGATION BY COMMANDING OFFICER: SUMMARY POWER OF COMMANDING OFFICER: PROVOST-MARSHAL.

(i.) *Arrest.*

Military custody of person charged with offence.

1. Whenever any person subject to military law is charged with an offence, he may be taken into military custody, which in the case of an officer means arrest, and in the case of a soldier means confinement. Non-commissioned officers are, as a rule, put in arrest, and not in confinement (*a*). Persons subject to military law as officers under s. 175 will be put in arrest; persons subject to military law as soldiers under s. 176 will usually be put in confinement.

Arrest of officer.

2. An officer is put in arrest either directly by the officer who orders it, or more generally through the medium of a staff officer, *i.e.*, by the adjutant or a field officer of the regiment when the arrest is ordered by the commanding officer, and by an officer of the general staff when the arrest is ordered by a superior officer, and not through the channel of the commanding officer. The order may be verbal or written, the latter as being more formal being the preferable mode, except where the offence is committed in the presence of the commanding or superior officer. On being put in arrest, an officer is deprived of his sword, and becomes to all intents and purposes a prisoner.

Arrest may be close or open.

3. The arrest may be either close, or open, according to the direction of the officer who ordered it. The Queen's Regulations, 1885, direct that an officer in close arrest shall not leave his quarters or tent; but an officer in open arrest may be permitted to take exercise at stated periods within certain limits, which are usually the precincts of the regimental barracks or camp; he must not, however, appear out of uniform, nor at mess, nor at any place of amusement or public resort, such for instance, as a billiard room, nor must he wear sash, sword, or belts (*b*). An officer placed under arrest should always be informed in writing of the nature of the arrest; which will be governed by

(*a*) Army Act, s. 45 (1), (2). Q.R., 1885, Sect. VI, paras. 18, 24.

(*b*) Q.R., 1885, Sect. VI, paras. 19, 20.

the circumstances of the case. Any change in the nature of the arrest should be notified in writing to the prisoner. An officer may, if the circumstances of the case require it, be placed in the charge of a guard, piquet, patrol, or sentry, or if on active service abroad, in the custody of a provost-marshal (a). An officer under arrest may be ordered or permitted to attend as witness before a court-martial, or before a civil court.

4. As a rule, a commanding officer will not place an officer under arrest without investigation of the complaint or the circumstances tending to criminate him; though cases may occur in which it would be necessary to do so. It is the duty of the commanding officer to report each case of arrest without unnecessary delay to the general or other officer commanding the district or station (b).

Arrest usually preceded by investigation.

5. It is expressly laid down by s. 45 (3) of the Army Act, that a junior officer may order the arrest of a senior (even of a different corps or branch of the service), if engaged in any quarrel, fray, or disorder; and in the case of any glaring impropriety, such as drunkenness on parade, it may become the duty of a junior to take the same extreme measure.

Arrest of senior by junior officer in certain circumstances.

6. This was clearly shown by the order on a court-martial for the trial of Brevet Lieut.-Col. H. at Plymouth, in 1819. Lieut.-Col. H. appeared at a regimental parade in a state of intoxication, and was put under arrest by Captain E., one of his junior officers. He was tried "for being drunk on duty when under arms inspecting the guards and piquet of the Regiment of Foot," and sentenced to be cashiered; the court observing that the occurrence of a commanding officer being put under arrest while in the actual command of a regimental parade was unprecedented in their experience; and that the circumstances detailed in evidence were not of that imperious urgency as to have called for the immediate adoption of so very strong a measure. The Prince Regent, however, in confirming the finding and sentence, took occasion to signify that he could not allow the observations of the court to go forth to the army without explaining "that the court are in error when they suppose that circumstances may not occur even upon a parade to justify a junior officer in taking upon himself the strong responsibility of placing his commander in arrest; such a measure must rest alone upon the responsibility of the officer who adopts it, and there are cases wherein the discipline and welfare of the service require that it should be assumed. In the pre-

Case of Lt.-Col. H. in 1819.

(a) Q.R., 1885, Sect. VI, para. 18.

(b) Q.R., 1885, Sect. VI, para. 22. See for summary of the provisions of the Act and rules for preventing unnecessary detention in arrest, s. 45 of the Act, and note.

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"sent instance the sentence of the court appears to afford
 "a full justification of Captain E.'s conduct in the placing
 "of Lieut.-Col. H. in arrest, though it would have been
 "more regular if that officer had continued to rest upon
 "his own responsibility, without calling a meeting of his
 "brother officers to support it by their opinion."

Officer under
 arrest has
 no right to
 demand
 court-
 martial

7. The Queen's Regulations, 1885, point out that an officer put under arrest has no right to demand a court-martial, nor after he has been released by proper authority, to persist in considering himself under arrest, or to refuse to return to his duty. If he conceives himself wronged by arrest, his remedy is to complain to the officer Commanding-in-Chief (a).

Release of
 officer.

8. The release of an officer under arrest may be ordered by the officer who imposed the arrest, or the superior to whom it may have been reported; but, as a rule, the release is not to be ordered without the sanction of the highest authority to whom the case may have been referred (b).

No privilege
 of Parlia-
 ment from
 arrest.

9. Peers and Members of the House of Commons are not privileged from arrest; but the fact and cause of the arrest should always be communicated to the Lord Chancellor, or to the Speaker, as the case may be.

Non-commis-
 sioned
 officers.

10. The rules which govern the close and open arrest of officers apply also to non-commissioned officers (c). A non-commissioned officer charged with a serious offence will as a rule be placed under arrest forthwith; but in case of doubt as to the commission of the offence, the arrest may be delayed (c); and if the offence is not serious, it may be disposed of without previous arrest.

Confinement
 of private
 soldiers.

11. Private soldiers taken into military custody (not under sentence) are confined in charge of a guard, piquet, patrol, or sentry, or of a provost-marshal; except for minor offences, such as absence from tattoo and other roll-calls, overstaying a pass, and other slight irregularities in quarters, which are to be disposed of by the commanding officer, without previously lodging the offender in the guard-room. In permanent barracks soldiers confined in charge of a guard will usually be detained either in the prisoners' room, or in the guard-room cells (d). They are never to be kept in irons, except when it is necessary for safe custody, or to prevent violence. A soldier against whom a charge for a minor offence is pending, is not regarded as a prisoner, and attends all parades, though he will not be detailed for duty. Where troops are in billets

(a) Q.R., 1885, Sect. VI, para. 23; Army Act, s. 42.

(b) Q.R., 1885, Sect. VI, para. 21.

(c) See para. 3 above. Q.R., 1885, Sect. VI, para. 24.

(d) Q.R., 1885, Sect. VI, para. 25. As to soldiers in a state of drunkenness, see para. 27.

or on the line of march, or accommodation for the detention of soldiers is otherwise not available, a soldier in military custody (not under sentence), may be committed by order of his commanding officer, for a period not exceeding seven days to any civil prison or lock-up (a). An offender, while in arrest or confinement, is not required to perform any military duty, further than may be necessary to relieve him from the care of any cash, stores, &c., for which he is responsible; nor is he permitted to bear arms, except by order of his commanding officer in case of emergency or on the line of march; and if by error he is ordered to perform any duty, his offence is not thereby condoned (b). On board ship he should, if not in close confinement, take his regular turn of watch, although he should not be placed on guard.

A man may be confined while awaiting trial by court-martial, or the promulgation of the finding and sentence of the court-martial which tried him, and may be so confined in a provost prison (c). A man when confined can only be released by competent authority, e.g., if confined in a regimental guard room he can only be released by the authority of the commanding officer of the regiment, and if in a garrison guard room by the authority of the officer commanding the garrison.

12. The offence of breaking or attempting to break arrest or confinement renders an officer liable to be cashiered, and a soldier liable to imprisonment (d). An offender confined to quarters and quitting them for any purpose whatever, however short the time of his absence, is strictly speaking guilty of breaking his arrest. The gravity of the offence will depend mainly on whether the circumstances do or do not disclose deliberation, and intentional defiance of authority.

13. The offences of releasing without proper authority a prisoner, and of suffering a prisoner to escape, are punishable still more severely; but an offender who acts wilfully is liable to penal servitude, while one who acts negligently is liable to imprisonment only (e). It will be remembered that here, as elsewhere, the punishments specified are maximum punishments.

14. An officer or non-commissioned officer commanding a guard, or a provost-marshal, cannot refuse to receive or keep any person committed to his custody by an officer or non-commissioned officer; but the committing officer or

(a) Q.R., 1885, Sect. VI, para. 25. For form of order see Form L in App. III to Rules of Procedure.

(b) Q.R., 1885, Sect. VI, para. 31.

(c) Q.R., 1885, Sect. VI, para. 208.

(d) Army Act, s. 22. As to escape, see note to that section.

(e) Army Act, s. 20.

(A.M.L.)

non-commissioned officer must, at the time of committal, or within 24 hours after, deliver a written account, signed by himself, of the offence with which the person committed is charged (a).

Account of
offence.

15. This "account" should be a concise summary of the evidence on which the accused was made a prisoner, and should contain, without any unnecessary detail, all the material points of the offence. If the account states that the prisoner was drunk or absented himself, and a witness subsequently adds before the investigating officer that the prisoner struck a non-commissioned officer, or used threatening language, the presumption is that the prisoner's conduct had not at the time been thought sufficiently serious to amount to an offence, and to be entered in the account. As a rule then, the investigating officer would treat the fresh evidence merely as showing the nature and degree of the offence originally deposed to; but in some cases he may consider it advisable to make this new evidence the substance of a specific charge.

Omission to
deliver
account.

16. The omission of the committing officer to deliver the "crime" (as the "account" is generally termed) (b) will not justify the commander of the guard or provost-marshal in rejecting, much less in releasing, a prisoner. His proper course in the event of such omission, is to specially report the name and rank of the prisoner, and of the committing officer, to his superior officer, stating that no "crime" has been delivered. It then becomes the duty of the superior officer to call on the committing officer for explanation, and either to order the release of the prisoner, or to take such other steps as may appear expedient.

Duty of
commander
of guard to
report name
and offence
of prisoner.

17. It is the duty of the commander of the guard (immediately on the relief of the guard), to report in writing to the officer to whom he is ordered to report, the prisoner's name and offence, and the name and rank of the committing officer; and he should include in his report the "account" above-mentioned, or if it has not been delivered, should state the fact. If he fails to make this report within 24 hours after the prisoner was committed, or where he is relieved from his guard within that period, then immediately on being so relieved, he himself commits an offence. The report will, as a rule, be made to his commanding officer (c).

(a) Army Act, s. 45 (4).

(b) Q.R., 1885, Sect. VI, para. 16.

(c) Army Act, s. 21. See for summary of the provisions of the Act, and rules for preventing unnecessary detention in confinement, s. 45 of the Act and note.

(ii.) *Investigation by Commanding Officer.*

18. The object of the above report is to enable the prisoner's commanding officer, without delay, to institute an investigation of the case. There is some difference in the procedure in the case of an officer and in that of a soldier.

Investigation by commanding officer.

19. The case of an officer may be referred to a court of inquiry, and need not, unless the officer requires it, be formally investigated before his commanding officer (a); but the commanding officer, in the case of an officer as well as of a soldier, is made by s. 46 of the Army Act responsible for dismissing the charge, if it ought not to be proceeded with; and, if it ought to be proceeded with, for taking the proper steps to bring the offender before a court-martial.

In case of officer.

20. The case of a soldier must be investigated by the commanding officer himself, or by an officer to whom he has delegated the conduct of the investigation. He can dismiss the charge, or remand the case for trial by court-martial, or can apply to superior military authority (b), or, in the case of a private soldier, can award punishment summarily. A warrant officer or person subject to military law as a soldier, but not belonging to Her Majesty's forces, cannot be summarily punished, and a non-commissioned officer, though not legally exempt, is not allowed by the Queen's Regulations, 1885, to be summarily punished (c).

In case of soldier.

21. This duty of investigation by the commanding officer requires deliberation, and the exercise of temper and judgment, in the interest alike of discipline and of justice to the prisoner. The investigation usually takes place in the orderly-room, in the morning, and must be conducted in the presence of the prisoner (d); but, in the case of drunkenness, a prisoner should never be brought up till he is perfectly sober (e).

Duty of officer conducting investigation.

22. After the nature of the offence charged has been made known to the prisoner, the witnesses present on the spot who depose to the facts for which he has been confined are examined. In the case of absence without leave exceeding seven days, the prisoner has a right to demand that the witnesses against him be sworn; and in all cases he will have full liberty of cross-examination (f).

Examination of witnesses.

(a) Rule 8.

(b) Army Act, s. 46, Rule 4.

(c) Army Act, s. 182 (1); 184 (2). Q.R., 1885, Sect. VI, para. 44; and as to summary punishments, see below, para. 81, &c.

(d) Rule 3 (A).

(e) See Q.R., 1885, Sect. VI, para. 27, which suggests the lapse of 24 hours before he is brought up.

(f) Army Act, s. 46 (6); Rule 3 (A), (B).

Decision of
command-
ing officer.

23. The commanding officer, after hearing what is urged against the prisoner, will, if he is of opinion that no military offence at all, or no offence requiring notice has been made out, at once dismiss the charge (a). Otherwise, he must ask the prisoner what he has to say in his defence, and whether he has any witnesses to call, and will give him full opportunity both of making a statement and of supporting him by evidence (b). The commanding officer will then consider whether to deal summarily with the case himself, or to send it for trial by a court-martial. If the offence is one which he has authority under the Queen's Regulations, 1885, to dispose of summarily, or to send for trial by regimental court-martial without reference to superior authority, he will be guided in his decision by the character of the individual, the nature and degree of the offence, its prevalence at the time, and also by the probability of a conviction. In any case of difficulty, he can refer to superior authority. If the offence is not one of the above-mentioned class, he must refer to superior authority, unless he is of opinion that delay is inexpedient, in which event he will dispose of the case himself, reporting his action and his reasons to the officer to whom he would otherwise have referred the case (c). If a court-martial is ordered or applied for, the prisoner can be kept in arrest or confinement until the charge is disposed of.

Caution as
to expressing
opinion.

24. During the investigation, the officer conducting it must be careful not to let fall, before he disposes of the case, any expression of opinion as to the prisoner's guilt, or one which might prejudice him at a subsequent trial (d). It frequently happens that officers who have been present at the investigation are detailed as members of the court convened in consequence of it; therefore nothing should be said or done which might, though unconsciously, bias their judgment beforehand.

When
soldier can
claim court-
martial.

25. If the commanding officer deals with the case summarily, and awards imprisonment or a fine, or deduction from ordinary pay, also if deduction from ordinary pay will be the result of his award, he must ask the soldier whether he wishes to be tried by court-martial; and the soldier may if he chooses claim to be tried by a district court-martial. Save in the above cases, a soldier has no right to claim a court-martial (e).

Summary of
evidence to
be taken in

26. Where a commanding officer decides on applying for a district or general court-martial, the evidence given by

(a) Rule 4 (A).

(b) Rule 3 (A).

(c) Rule 4; Q.R., 1885, Sect. VI, paras. 35-37.

(d) Q.R., 1885, Sect. VI, para. 32.

(e) Army Act, s. 46 (8); Rule 7.

any witnesses before him must be taken down in writing in the presence of the prisoner; the prisoner should be allowed to cross-examine within reasonable limits, and if there is any variance between the evidence as taken down and that given on the prior investigation, the prisoner must be allowed to question the witness as to such variance. Any statement made by the prisoner, which is material to his defence, will also be added in writing (a), but the prisoner must be warned that this will be done.

case of re-
mand for
district or
general
court-
martial.

27. The evidence and statement, if any (called the summary of evidence), must be taken down in the presence of the commanding officer himself, or of some officer deputed by him (b). Great care is necessary in the performance of this duty; the exact words used by the witness or prisoner should as nearly as possible be taken down, and the summary should be free from any expression of opinion or conjectures, and from matter not bearing on the case. The difference not unfrequently observable between the statements recorded in the summary of evidence and the evidence given before a court-martial, may often be traced rather to the hasty or careless preparation of the summary, than to any prevarication or desire to mislead on the part of the witnesses.

Mode of
taking
summary.

28. If, in taking the evidence in writing, any fresh matter is brought out, or if for any other reason the commanding officer desires to reconsider his decision, he is at liberty to do so, and to deal with the case summarily, instead of sending it to a court-martial (c).

Command-
ing officer
may re-
consider his
decision.

29. The summary of evidence, like the depositions before justices, may be used for certain limited purposes at the trial, and also for the purpose of giving to the prisoner notice of the charge he will have to meet, and to the convening officer and president of the court notice of the case to be tried. Either the summary itself or a true copy must be laid before the court-martial before whom the prisoner is tried; and a copy may be given to the prisoner gratis, and must be given to him on his request and payment of the proper fee (d).

Use of
summary of
evidence.

30. An application for a court-martial should usually be disposed of at once; but if the convening officer detects matter showing culpable neglect or improper conduct on the part of the prisoner's superiors, he may delay assembling a court for the purpose of making inquiry. If he thinks the case one for a regimental court-martial, he should as a rule order the commanding officer to convene it, and

Convening
court.

(a) Rule 5 (A), (B).

(b) Rule 5 (C).

(c) Rule 5 (C).

(d) Rule 5 (D), (E). As to use of summary see note to Rule 5.

not convene it himself. In most instances, the offences referred to him by the commanding officer in pursuance of the Queen's Regulations, 1885, may well be disposed of regimentally, or by an inferior court, unless circumstances render it necessary in the interests of discipline to deal with them more severely. The officer who convenes a court-martial is responsible for the correctness of the charges (*a*), and will carefully settle them after considering the evidence as shown in the summary. The charge sheet containing the charges as approved by the officer convening the court-martial will be sent to the president, as well as the summary of evidence, or a true copy thereof, and will be laid by him before the court-martial (*b*). The prosecutor should have a copy of the charge sheet and summary, or at least should have access to them.

(iii.) *Summary power of Commanding Officer.*

Power to deal summarily with case of non-commissioned officer or soldier.

31. The power of the commanding officer to punish summarily a soldier is twofold; first, the power under the Army Act to award imprisonment, deduction from ordinary pay, and in the case of drunkenness a fine not exceeding 10s. (*c*); and secondly, the power under the Queen's Regulations, 1885, to award the minor punishments of confinement to barracks, or extra guards or picquets, subject and according to the provisions of para. 42 of Section VI, to which reference must be made. The imprisonment must not exceed seven days, except in the case of absence without leave, in which case it may extend to the number of days of absence, not exceeding twenty-one (*d*). A non-commissioned officer is not to be subjected to summary or minor punishments by his commanding officer, but he may be reprimanded or ordered to revert from an acting or lance rank to his permanent grade (*e*), or may be removed from an appointment to his permanent grade, but this power of removal, if the non-commissioned officer is above the rank of corporal, and in one or two other cases, is not to be exercised without reference to superior authority (*f*).

Drunkenness.

32. Drunkenness and absence without leave are the two offences which require to be most frequently dealt with by the commanding officer: indeed, the case of drunkenness of a soldier not on duty (not being an aggravated offence of drunkenness within the meaning of s. 44 of the Army Act) *must* be so dealt with, unless the soldier has been guilty of drunkenness not less than four times in the

(a) Rule 17 (A).

(b) Rule 17 (E).

(c) Army Act, ss. 46, 138; Q.R., 1885, Sect. VI, para. 42.

(d) Army Act, s. 46 (2) (a), (4); Rule 6, and see note.

(e) Q.R., 1885, Sect. VI, para. 44.

(f) Q.R., 1885, Sect. VII, para. 114.

preceding twelve months (a). This obligation does not apply to a non-commissioned officer charged with drunkenness (b).

33. In the case of absence without leave, the commanding officer may, as already observed, award imprisonment not exceeding twenty-one days; but in determining his award he is to have regard to the number of days of absence, and though he may give 168 hours' imprisonment for absence during *less* than seven days, yet it must always be remembered that for absence *exceeding* seven days, the term awarded cannot exceed the number of days of absence. For example, suppose private *A.B.* has been absent without leave, and the commanding officer thinks it expedient to award imprisonment, then the imprisonment may be, if the man has been absent three days, for any number of hours up to 168; if he has been absent eight days, for any number of hours up to 168, or for eight days; if he has been absent eighteen days, for any number of hours up to 168, or any number of days from seven to eighteen (c).

34. By s. 46, coupled with s. 138, and the Royal (Pay) Warrant, the commanding officer is authorised to direct a forfeiture of the soldier's ordinary pay for every day of absence without leave not exceeding five days; while pay is forfeited as a matter of course for every day of absence either on desertion, or without leave exceeding five days, or as prisoner of war; also for every day of imprisonment under sentence, or of detention under any charge resulting in conviction by a court-martial or civil court, or under a charge of absence without leave, resulting in an award of imprisonment by his commanding officer; also for every day in hospital on account of sickness, certified to have been caused by an offence committed by him. In cases where the pay is forfeited as a matter of course, there should be no award, and the forfeiture can only be remitted by the Queen or the Secretary of State (d). The commanding officer may also, where a soldier is not tried by court-martial, order stoppage of his pay to make compensation for any expenses or damage occasioned by any offence committed by him, or caused by his losing or destroying any arms, equipment, military necessities, and so forth, or by his injuring any buildings or property (e); and may likewise order the stoppage of the amount of any fine awarded by a court-martial or a civil court, or the commanding officer himself; also the

Absence without leave.

Award of forfeiture in case of absence.

(a) Army Act, s. 46 (3); Q.R., 1885, Sect. VI, paras. 51-59.

(b) Army Act, s. 183 (1).

(c) In dealing summarily with cases of absence, the commanding officer must take into consideration all the circumstances. Q.R., 1885, Sect. VI, para. 47.

(d) Army Act, ss. 138, 139.

(e) Army Act, s. 138 (3), (4).

stoppage of any sum which the soldier may be required to pay for the maintenance of his wife or child, or of any bastard child, or towards any relief granted by way of loan to his wife or child (a).

Right of soldier in certain cases to demand district court-martial.

35. There is no appeal in the strict sense of the word from the award of the commanding officer, but, as has been already mentioned, if the award subjects the soldier directly or indirectly to any deduction from ordinary pay, or imposes imprisonment or a fine, the soldier has a right to demand a district court-martial. This provision does not prevent the commanding officer trying the man by regimental court-martial if he does not demand a district court-martial. If the commanding officer thinks proper, he may (except in a case within s. 46 (3)) vindicate the justice of his award, finding the man guilty, by remanding him for trial instead of punishing him summarily (b).

No trial after punishment by commanding officer.

36. When once an offender has been punished by his commanding officer, he cannot be tried by a court-martial for the same offence; and similarly he cannot be punished by his commanding officer or subjected by him to any stoppage for any offence of which he has been acquitted or convicted by a court-martial or by a competent civil court (c). When a commanding officer has once awarded punishment for an offence, he cannot afterwards increase it (d). It is considered that a commanding officer's award is complete when the man has left his presence.

Delegation of power by commanding officer.

37. A commanding officer will delegate to officers commanding troops, companies, or batteries, the power of awarding for minor offences minor punishments not exceeding seven days' confinement to barracks (e).

Commanding officer of detachment.

38. The commanding officer of a detachment has, unless restricted by superior authority, the same power of awarding summary punishment as the commanding officer of a corps (f).

(iv.) *Provost-Marshal.*

Provost-marshal.

39. Arrests will often be made abroad by the provost-marshal or his assistants, who may be appointed by a general officer commanding a body of forces abroad, whether on active service or not. A provost-marshal cannot, as was formerly the case, inflict any punishment

(a) Army Act, s. 138 (7), (8).

(b) Rule 7 (C), (D).

(c) Army Act, s. 46 (7).

(d) Rule 6 (B). As to the power of the general officer commanding the district to cancel an award, or reduce the punishment, see Q.R., 1885, Sect. VI, para. 50.

(e) Q.R., 1885, Sect. VI, para. 46.

(f) Q.R., 1885, Sect. VI, para. 13, and see paras. 14, 15.

of his own authority (*a*). He can only arrest and detain for trial persons subject to military law committing offences, and carry into execution punishments to be inflicted in pursuance of a court-martial (*b*).

(v.) *Discipline on Board H.M.'s Ships.*

40. The discipline of troops embarked as passengers on board any of Her Majesty's ships is regulated by an Order in Council of 6 February, 1882, printed in Manual of Military Law, pp. 779-84.

Discipline
on board
H.M.'s ships.

(*a*) The provost-marshal was, until 1829, appointed by the general, and exercised his powers without any statutory authority, and the appointment could only be justified legally as being made under the Queen's prerogative to govern the army in time of war in places out of Her dominions. Considerable doubt must have existed as to the existence of the power, and consequently as to the legality of the provost-marshal's acts, and a correspondence took place between the Duke of Wellington and the Government on the subject during the Peninsular War. (See Clode, *Mil. Forces*, ii. p. 662). In 1829 the Article of War respecting the provost-marshal was inserted, and gave legal recognition and—if it was within the powers of the Articles—legal sanction to the appointment and powers of the provost-marshal. (See Clode, *Military and Martial Law*, pp. 181-3.) The above powers were curtailed in 1879 by the Act of that year.

(*b*) Army Act, s. 74.

CHAPTER III.

CHAPTER V. IN MANUAL OF MILITARY LAW.

COURTS-MARTIAL.

(i.) *Constitution and Jurisdiction.*

Three descriptions of court-martial.

1. The descriptions of court-martial before which a prisoner whose case is too serious to be disposed of summarily by the commanding officer, can ordinarily be brought, are three (a) -

- (1.) The regimental court-martial ;
- (2.) The district court-martial ; and
- (3.) The general court-martial.

None of these tribunals has power to try any person unless he is subject to military law as provided by the Army Act (b). But each of them has under the Army Act complete jurisdiction to try any military offence whatever committed by a person so subject to military law ; the difference between their powers consisting, in the extent of punishment which each tribunal can award, and in the incapacity of the inferior tribunals to try officers and persons in the position of officers.

Powers of regimental court.

2. Thus, a regimental court-martial cannot award a heavier punishment than forty-two days' imprisonment, and cannot discharge a soldier with ignominy ; nor can it try an officer or a warrant officer, or a person subject to military law, but not belonging to Her Majesty's forces (c).

Of district court.

3. A district court-martial cannot award any punishment higher than two years' imprisonment ; and cannot sentence a warrant officer to any punishment except dismissal, or such suspension or reduction as is mentioned in s. 182 of the Army Act, and cannot try an officer (d).

Of general court.

4. A general court-martial alone can award the punishments of penal servitude and death, and can try an officer.

Jurisdiction in respect of certain offenders.

5. A person who since the commission of an offence by him has ceased to be subject to military law, may never-

(a) As to field general court-martial, and as to summary court-martial, see p. 31.

(b) Army Act, ss. 175, 176 ; see also M.M.L., Chapter XIV, para. 47.

(c) Army Act, s. 47 (5) ; s. 182 (1) ; s. 184. A non-commissioned officer above the rank of corporal is not ordinarily to be tried by a regimental court. Q.R., 1885, Sect. VI, para. 4 (A).

(d) Army Act, s. 48 (6).

theless be tried and punished by a court-martial for his offence; but except in the case of mutiny, desertion, or fraudulent enlistment, he can only be tried within three months after he ceased to be subject to military law (*a*); but militia and reserve men can in the case of certain offences be tried within two months after their apprehension (*b*). A court-martial has no jurisdiction to try a person for any offence of which he has been already acquitted or convicted by a court-martial or by a competent civil court (*c*); but this does not apply where there has been no regular trial resulting in an acquittal or conviction (*d*), and in the case of a court-martial the conviction must have been duly confirmed. But although as a general principle non-confirmation of a conviction by a court-martial enables a man to be tried again, it is obvious that this course should only be exceptionally adopted, as *e.g.*, if the plea of a prisoner to a charge of desertion is, that he was guilty but intended to return, and this plea has been recorded as guilty, although amounting to a plea of not guilty. The cases where such a course is more particularly applicable, are mentioned in the Act (see ss. 53, 54 (6), 157) and the Rules (see 55 (B), 56, 65 (B), 98).

6. An offence, other than mutiny, desertion, or fraudulent enlistment, cannot be tried by court-martial if three years have elapsed since the date of its commission (*e*). but a partial exception from this is made for militia and reserve men (*b*). An offence, wherever committed, may be tried and punished at any place (either within or without Her Majesty's dominions) which is within the jurisdiction of an officer authorised to convene general courts-martial, and the trial will take place as if the offender were under the command of such officer (*f*). Offences committed on board ship can be tried on board before reaching the port of disembarkation, as if committed on land at the place where the offender embarked, but a court-martial is never held on board one of Her Majesty's ships, except a regimental court-martial for trying a non-commissioned officer (*g*).

Further
observations
on jurisdiction.

(*a*) Army Act, s. 158 (1).

(*b*) Reserve Forces Act, 1882, s. 26; Militia Act, 1882, s. 43.

(*c*) Army Act, ss. 53, 157, 162 (6), and note.

(*d*) See Rule 65 (B).

(*e*) Army Act, s. 161. When a soldier has served in a corps for three years in an exemplary manner, he cannot be tried for fraudulent enlistment or for desertion (other than desertion on active service) committed before the commencement of such three years (s. 161). If a soldier has served for three years without an entry in the regimental defaulters' book, he is to be considered as having earned exemption under the above enactment; Q.R., 1885, Sect. VI, para. 37.

(*f*) Army Act, ss. 159-160.

(*g*) Army Act, s. 188; Naval Discipline Act, s. 88. As to discipline of troops on board H.M.'s ships, Order in Council, M.M.L., pp. 779-84.

Composition
of courts.

7. Closely connected with the difference between courts-martial as regards their power of punishment is the difference as regards their composition, in that the inferior courts-martial consist of fewer members, and may be composed of officers of lower rank.

Legal
minimum.

8. Thus the legal minimum number of members on a regimental court-martial is three: on a district court-martial in the United Kingdom, India, Malta, and Gibraltar, five, and elsewhere, three; and on a general court-martial in the United Kingdom, India, Malta, and Gibraltar, nine, and elsewhere five (a).

Of regi-
mental
court.

9. The members of a regimental court are not required to be, but will as a rule all be, officers of the prisoner's regiment or attached to it, except where detachments of several corps are serving together,—on the march, for example, or on board ship (b). Every member of a regimental court must have held a commission for a year (c).

Of district
court.

10. A district court-martial must consist so far as seems practicable of officers of different corps, and can only be composed exclusively of officers of the same regiment of cavalry or battalion of infantry, if other officers are not available (d). Every member of a district court must have held a commission for two years (e).

Of general
court.

11. A general court-martial must also consist so far as seems practicable of officers of different corps, and can only be composed exclusively of officers of the same regiment or battalion if other officers are not available (d). Every member of a general court-martial must have held a commission for three years, and if the court is to try a field officer, must not be under the rank of captain. The Army Act further provides that no less than five members must be of a rank not below that of captain; and Rule 21 requires the members of a court-martial for the trial of an officer to be of equal, if not superior, rank to that officer, unless officers of such rank are not available. For the trial of the commanding officer of a corps, as many members as possible must hold or have held commands equivalent to that held by the prisoner (f).

Trial of
members of
auxiliary
forces.

12. In the case of the trial of a prisoner belonging to the auxiliary forces, two members of the court are, if

(a) See Army Act, s. 48, Rule 18, and note; and as to the number to be detailed in ordinary cases, Q.R., 1885, Sect. VI, para. 93.

(b) The detachment court-martial which existed under the old Mutiny Acts and Articles of War is merged in the regimental court-martial. The only distinction of importance between them used to be that the detachment court-martial consisted of officers of different corps.

(c) Army Act, s. 47 (2) (see note), Rule 19 (C).

(d) Rule 20 (A).

(e) Army Act, s. 48 (4), Rule 10 (C).

(f) Rules 19 (C), 20 (A), and 21; Army Act, ss. 48 (2), 54 (4); Q.R., 1885, Sect. VI, para. 95.

practicable, to belong to those forces, and one or both of them should belong to the same branch as that to which the prisoner belongs (a).

13. In all cases the members of a court must be themselves subject to military law, and must not be personally interested in any manner in the case to be tried by them. Nor can an officer sit on a court-martial if he is the convening officer, or the prosecutor, or a witness for the prosecution, or if he investigated the charges, or was member of a court of inquiry respecting the matters on which the charges are founded, or if he is the commanding officer of the prisoner, or of his corps or battalion (b).

General provisions.

14. The president of a court-martial must always be appointed by the convening officer. The other officers may be either appointed or detailed by the convening officer, and if detailed may be appointed by the proper officer according to the custom of the service. The president of a court-martial should be not below the rank, in the case of a regimental court, of captain; and in the case of a district or general court, of a field officer; but may in exceptional circumstances be of lower rank. In the case of a general court-martial, if a general officer or colonel is available, an officer of inferior rank is not to be appointed (c). Honorary rank does not entitle an officer to the presidency of a court-martial (d); but he is legally qualified if duly appointed. In practice a combatant officer is always appointed.

President.

15. The object of the regimental court-martial is to try offences which, though not of a very serious nature, appear from the character of the offender or otherwise, to require severer punishment than the commanding officer can award; or which for some particular reason he may deem it inexpedient to deal with himself. The powers of district courts-martial are sufficient to deal with all ordinary crimes committed by non-commissioned officers and soldiers; and the Queen's Regulations, 1885, direct that the higher tribunal of a general court-martial is only to be resorted to in aggravated cases of such serious crimes as are punishable with penal servitude or death (e).

Remarks on trial of offences by different courts.

16. The descriptions of courts-martial further differ as regards the officers who can convene them.

Convening officer.

17. A regimental court-martial can be convened by a commanding officer (as defined by Rule 128) if not below

Of regimental court.

(a) Rule 20 (B).

(b) Army Act, s. 50 (3), Rule 19 (B). See also notes to that section and Rule, as to investigating officer and personal interest. A member of a court cannot act as confirming officer for that court, Army Act, s. 54 (4).

(c) Army Act, s. 47 (4), and s. 48 (8); Q.R., 1885, Sect. VI, para. 95.

(d) Pay Warrant.

(e) Q.R., 1885, Sect. VI, para. 68.

the rank of captain; also by an officer not below the rank of captain when in command of two or more corps, or portions of two or more corps, and on board a ship by a commanding officer of any rank. It may thus be convened, not merely by the commanding officer of a regiment or detachment, but by an officer *de facto* commanding detachments of several regiments, however temporary his command may be, if he has, by the custom of the service, authority to tell off the prisoners belonging to those detachments. A regimental court-martial can also be convened by an officer who is authorised to convene a general or district court-martial; but he should order the commanding officer (above described) to convene it, unless that officer is unable to form an adequate court from the officers under his command (a).

Of district court.

18. A district court-martial can be convened by an officer authorised to convene a general court-martial, or by an officer who has received from such officer a warrant authorising him to convene district courts-martial (b).

Of general court.

19. A general court-martial can be convened by direct warrant from Her Majesty, or by an officer authorised by Her Majesty to convene such courts, or by an officer holding a warrant to convene such courts from some officer authorised to delegate the power of convening them (c).

Warrants for convening and confirming findings and sentences in U.K.

20. Warrants giving officers powers to convene general courts-martial are usually issued by the Queen to the officer commanding-in-chief, and to general officers commanding districts in the United Kingdom.

In India and elsewhere out of U.K.

21. In India warrants giving power to convene and to confirm the findings and sentences of general courts-martial are usually issued to the Commander-in-chief in India, and to the commanders-in-chief of the Presidencies; elsewhere out of the United Kingdom to general officers commanding, either in the colonies or on active service.

Contents of warrants.

22. Any such warrant, and also any warrant of delegation given by the officer so authorised, may contain any reservations or special provisions, and may be addressed to an officer by name or by the designation of his office; and may give authority to a person performing the duties of an office named, or to the successors in command of an officer; and may be wholly or partly revoked by a fresh warrant (d).

Power of convening district courts-martial.

23. Every general officer authorised, whether immediately by warrant from the Queen or mediately by delegation, to convene a general court-martial has by virtue of the

(a) Army Act, s. 47 (1); Q.R., 1885, Sect. VI, para. 75.

(b) Army Act, ss. 48 (2), 123.

(c) Army Act, ss. 48 (1), 122.

(d) Army Act, ss. 122 (3), (4), 123 (3). For forms of warrants, see M.M.L., p. 769.

Act power to convene either a district or regimental court-martial, and also to empower another officer to convene district courts-martial, who by virtue of this power will be able to convene a regimental court-martial. Such general officer should, however, as above mentioned, only convene a regimental court himself, where circumstances render that course desirable (a).

24. The foregoing remarks have left out of notice two courts-martial of an exceptional kind, termed a *Field general court-martial* and a *Summary court-martial*. In both cases the court has the same power as a general court-martial, including the power of trying an officer, and is convened in an exceptional way (no warrant being required), and is subject to exceptional rules, under which the procedure is of a more summary character than that of an ordinary court-martial (b).

25. A field general court-martial can only be convened in countries beyond the seas, to try offences against the property or person of inhabitants or residents which cannot, with due regard to the public service, be tried by an ordinary general court-martial. The exceptions and differences in its procedure from that of an ordinary general court-martial are laid down in Rule 103. Practically it is a substitute for the detachment general court-martial first established in 1813 by the Act 53 Geo. III. c. 99, for amending the Mutiny Act of that year, with a view to repress the spirit of plunder and outrage which had broken out in the army after the battle of Vittoria.

26. A summary court-martial can only be convened on active service, for the purpose of trying an offence committed on active service, which cannot, with due regard to the public service, be tried by an ordinary court-martial. It must consist of not less than three officers, unless the convening officer is of opinion that three are not available, in which case it may consist of two; and is governed by special rules of procedure (Rules 104—122) which require that in ordinary cases the procedure shall, with certain additions, be that of a field general court-martial under Rule 103, but where military exigencies require, the procedure may be still more summary. It is a substitute for the old power of the provost-marshal to inflict summary punishment on his own authority, though its jurisdiction is not limited, as that of the provost-marshal was, to punish offenders caught in the act.

(a) See above para. 17, and Q.R., 1885, Sect. VI, para. 75, which applies also if the offender belongs to a special corps or department.

(b) See ss. 49 and 55, and notes, and as to procedure of field general court-martial, Rule 103; of summary court-martial, Rules 104—122.

(A.M.L.)

(ii.) *Procedure.*

Application
for court-
martial by
command-
ing officer.

27. When a commanding officer remands an accused person for trial by court-martial he must immediately take steps for the assembly of the court, and unless for some special reason, must do so within 36 hours. If he decides on a regimental court, he will issue his order for convening it; in any other case he will send to superior authority an application for a district or general court-martial accompanied by the summary of evidence, the charges on which he proposes the accused person should be tried, and other documents, and in his letter of application he will state his reasons for desiring the particular description of court for which he applies. A reference to superior authority must similarly be made without delay. In deciding on the line of action he will take, the commanding officer will be governed by the directions given in the Queen's Regulations, 1885 (*a*).

Duty of
convening
officer in
considering
application
for court-
martial.

28. An officer receiving an application to convene a district or general court-martial must consider the nature of the case, the statutory provisions, and the regulations applicable to it, and subject thereto, must use his discretion as to the mode of disposing of the application. He must satisfy himself that the charge is for an offence under the Army Act, and properly framed in accordance with the Rules and the Queen's Regulations, 1885, and that the evidence justifies the trial of the prisoner (*b*). If he thinks it does not, he should order the prisoner to be released; if he doubts, he can order the release, or refer the case to superior authority. If he thinks it should be disposed of summarily or by regimental court-martial, he should give directions to that effect. If he thinks it should be tried by a district or general court-martial, he will either convene such a court, or apply for such a court to be convened.

Power to
refer to
superior
authority.

29. He is at liberty to refer to superior authority in any case of difficulty, and he will be bound to refer, if the case is one directed by order or regulation to be referred to an officer having power to convene a particular description of court. When a soldier is to be arraigned on a serious charge, charges for any minor offence may be dropped if the convening officer thinks proper (*c*).

Considera-
tions to be
borne in
mind by
convening
officer.

30. In forming his decision the convening officer will give due weight to the prevalence of the particular crime charged, to the general state of discipline in the corps or district, the character of the individual, and to all the

(a) Rule 4 (C), Q.R., 1885, Sect. VI, paras. 35-39.

(b) Rule 17 (A), Q.R., 1885, Sect. VI, para. 84.

(c) Q.R., 1885, Sect. VI, paras. 84, 85.

different circumstances which may render it expedient at one time to try an offence by a district court-martial, and at another time to take a more serious view of it (a). A case should not, as a rule, be sent for trial unless there is reasonable probability that the accused person will be convicted; at the same time, there may be cases where disgraceful charges have been preferred, and where a court-martial affords the only means to the accused of decisively clearing his character. In any event, members of courts-martial should not allow the fact of a case being sent for trial, or the fact of a particular description of court-martial having been selected, in any degree to influence their estimate of the evidence.

31. It is directed by the Queen's Regulations, 1885, that offenders are not to be sent home from foreign stations with charges pending against them, except in cases of necessity. But for the sake of convenience a prisoner may be removed for trial, from the place where he is serving, so long as he is not prejudiced in his defence by the change (b).

Removal of offender for trial.

32. The convening officer having settled the charges on which the prisoner is to be tried, should take steps for having them communicated to the prisoner. The officer communicating the charges to the prisoner should always inquire whether he understands them, and if not should fully explain them to him. A copy must always be given, except when on active service it is impracticable. The prisoner should, if he desires it, be informed of the officers by whom he is to be tried, as soon as they are named; and if he is to be tried together with other prisoners, he should always have notice given to him, so as to enable him to object on the ground that the evidence of the other prisoners is material for his defence. Reasonable steps are to be taken for procuring the attendance of any witnesses whom the prisoner desires to call (c). A prisoner is not entitled to any list of witnesses for the prosecution, neither is he bound to give the prosecutor a list of his own witnesses (d).

Notice to prisoner of charges, &c.

33. The prisoner is to have proper opportunity to prepare his defence, and liberty to communicate with his witnesses and legal adviser, or other friend. This liberty is subject to the limitation that they are available, as the object of the rule is to give the prisoner full opportunity to prepare his defence, but not to enable him to postpone his trial (e).

Prisoner to have opportunity of preparing defence.

(a) Q.R., 1885, Sect. VI, para. 68.

(b) Q.R., 1885, Sect. VI, paras. 86, 87.

(c) Rules 14, 15.

(d) Rule 76.

(e) Rule 13.

Assembly of
court.

34. When a court-martial assembles at the time and place named in the order, the members will take their seats according to their rank (a). If a judge-advocate has been appointed, he must be present. The court is considered to be open, and the prisoner may be, but need not be, present during the preliminary proceedings. The charges and summary of evidence in the case of all the prisoners, if more than one, will be produced by the president.

Hours of
sitting.

35. The hours of sitting will usually be, in the United Kingdom, between 10 a.m. and 4 p.m. or 11 a.m. and 5 p.m.; elsewhere they will be regulated by general officers commanding, but a court should never sit more than eight hours during one day (b).

Proceedings
before com-
mencement
of trial.

36. The first duty of the court will be to read the order convening the court. This order will appoint the president, and detail or appoint the officers; and will notify the judge advocate appointed. If the order appears on the face of it to be proper, the court will have complied with Rule 22 (A) (i), requiring them to ascertain that the court has been convened in accordance with the Army Act and Rules.

Eligibility
and freedom
from dis-
qualification
of members
of court.

37. The court will then proceed to ascertain that the proper number of officers is present, and that each of those officers is capable of serving; that is to say, is eligible and not disqualified to serve on the court-martial, and is of the rank required by the order convening the court (c). The eligibility of an officer depends on his status as an officer, that is on being subject to military law, and having held commission for the required period (d). Disqualification is a personal question, and depends on his being, or having been, in any manner a party to the case (e). The corps to which officers belong, or their rank, is a matter merely for the convening officer, except that the court should ascertain that the provisions of Rules 20 and 21 are observed, and on the trial of a field officer, that none of the officers are under the rank of captain (f). If any officer appears not capable of serving he will retire, and one of the officers in waiting will be directed to serve in his stead, and his capacity of serving must be considered in the same manner. It will usually be convenient, where there are officers in waiting, to consider their capacity to serve before proceeding further.

Of president.

38. The court will also ascertain that the president is of

(a) Rule 57.

(b) Q.R., 1885, Sect. VI, para. 96. Rule 63, p. 435.

(c) Rule 22 (A) (ii) and (iii).

(d) Army Act, ss. 47 (2), 48 (3) (4); Rule 19 (A) and (C).

(e) Army Act, s. 50 (2) (3); Rule 19 (B).

(f) Army Act, s. 48 (7). See also Rules 21 and 22.

proper rank as required by the Army Act (a), and that the judge advocate is not disqualified (b).

Of judge advocate.

39. If at any stage of the above proceedings the court are not satisfied on any point, or the president appears to be ineligible, disqualified, or not of proper rank, or if officers by being found to be ineligible or disqualified are obliged to retire so as to reduce the number below the detailed number, the court in some cases must adjourn, and in others will find it expedient to adjourn, for the purpose of consulting the convening authority. Where, however, the number of officers is not reduced below the legal minimum, and the court consider that in the interests of justice and of the service it is inexpedient to adjourn, they can proceed, but must record their reasons (c).

Adjournment if court not properly constituted, or prisoner not properly charged.

40. The court having ascertained the validity of their constitution, will then consider whether the prisoner to be tried is amenable to their jurisdiction and whether the charge is properly framed ; if not satisfied the court should adjourn and report to the convening authority (d).

Amenability of prisoner to jurisdiction.

41. As the court is an open court, the prosecutor may be present during the above proceedings, and may be consulted by the court ; but he has no status before the court until after those proceedings are concluded.

Prosecutor may be present.

42. On the conclusion of the above preliminary proceedings, the prosecutor will assume his position as prosecutor, being required then to take his seat, and the prisoner, if not previously present, will be brought before the court. The prisoner, if an officer, will be in the custody of an officer ; if a non-commissioned officer in the custody of a non-commissioned officer ; and if a private, in the custody of an escort. If necessary, an escort may be employed in any case (e).

Conclusion of preliminary proceedings.

43. The prisoner is allowed a seat as a matter of course in the case of an officer, and in any other case when the court think proper. Accommodation is to be afforded on the application of the prisoner, for his friend or counsel.

Seat for prisoner, when allowed.

44. The prisoner will then be asked whether he objects to be tried by the president or any of the officers appointed to form the court. If he does so object, he will be asked to name all the officers to whom he objects. If the objections are more than one, each objection will be taken in succession, that to the junior officer in rank being taken

Objections by prisoner to members of court.

(a) Army Act, ss. 47 (4), 48 (9), 182 (4).

(b) Rules 22 (B), 99 (B).

(c) Rules 18 (A), 22 (C).

(d) Rule 23.

(e) Rule 24, Q.R., 1885, Sect. VI, para. 97. If the prosecution is instituted at the instance of a civilian, that civilian may be in court and assist the prosecutor, but he cannot speak or take part himself in the prosecution, as (subject to the rule as to counsel) the prosecutor must be in every case subject to military law.

first. The prisoner will be asked to state the grounds of his objection, and those grounds will be submitted to the other officers, even though some of them may have been objected to, and will be decided by them. If the objection to an ordinary member is allowed the officer will retire, and one of the officers in waiting will be ordered to serve, subject to a similar right of objection by the prisoner. If the objection to the president is allowed, the court must adjourn. The mode of inquiring into and disposing of objections is detailed in Rule 25. An objection to the president must be allowed, if one-third of the members are in favour of allowing it (a); objections to other officers must be allowed, if allowed by one-half (b).

Procedure if
objections
allowed.

45. If the officers are by reason of the objections being allowed reduced in number below the legal minimum, the court must adjourn for the appointment of fresh members. If the court is reduced in consequence of objections below the number detailed, but not below the legal minimum, and the majority of the members think that in the interests of justice and for the good of the service it is inexpedient to adjourn, they can record their reasons and proceed with the trial, but otherwise they should adjourn for the appointment of fresh members (c). On the appointment of a new president or of fresh members the like procedure must be followed. Upon any such adjournment of the court the convening officer can, if he pleases, convene a new court, as the trial of the prisoner is not considered to begin until the court are sworn (d).

Swearing of
members.

46. After the disposal of any objections made by the prisoner the court will be sworn, if there is a judge advocate, by the judge advocate, and if not, by the president, the president being sworn by some member of the court who has been previously sworn. The form of oath is prescribed by the Army Act (e).

Of judge
advocate and
officers
attending
for instruction.

Of shorthand
writer
and inter-
preter.

47. After the members of the court are sworn the judge advocate and officers attending for the purpose of instruction will be sworn, and if it is intended to employ a shorthand writer or interpreter, he must be sworn also; but a shorthand writer or interpreter may be sworn at any stage of the proceedings (f). The prisoner cannot object to a judge advocate, but has a right to object to a person proposed to be sworn as interpreter or shorthand writer on the ground that he is not impartial. The president will therefore inform the prisoner of the person intended to be

(a) Army Act, s. 51 (3).

(b) Army Act, s. 51 (5).

(c) Rules 25, 18.

(d) Rule 18 (B).

(e) Army Act, s. 52 (1); and see Rule 27.

(f) Rules 28, 71.

sworn and ask him if he objects, and if so, on what ground. In certain cases a solemn declaration to the same effect as an oath may be substituted for the oath (a).

48. Where several prisoners are to be tried, whether together or separately, the members of the court may be sworn at the same time to try all of them, but each prisoner must be present, and asked separately if he objects to any member. One case will be taken first, and the others will be taken afterwards in succession (b).

Court may be sworn to try several prisoners.

49. As soon as the members and other persons are sworn, the prisoner will be arraigned. Arraignment consists in the judge advocate, or if there is none, the president or some member of the court reading each charge to the prisoner and asking him if he is guilty or not guilty of the charge. This will be done with each charge in a charge sheet, and if there is more than one charge sheet and the convening authority directs the prisoner to be arraigned at the same time on all the charge sheets, the same course will be followed with each charge in every charge sheet. It must, however, be recollected that where the prisoner is arraigned on more than one charge sheet, the prosecution, defence, and finding, in the case of each charge sheet, are to be kept separate (c).

Arraignment of prisoner.

50. Where several prisoners are charged with an offence committed collectively, any one of them may on his arraignment (if he has not done so before by notice to the convening authority) claim to be tried separately, on the ground that the evidence of some one or more of the other prisoners will be material to his defence. The court, if satisfied that the evidence will be material, must allow the claim, unless the nature of the charge—as might be the case (for example) in a charge of mutiny—does not admit of its allowance (d).

Claim of prisoners to be tried separately.

51. The prisoner before he pleads to a charge may object to its validity, and the court must either overrule the objection, or if they think it valid, adjourn for the purpose of obtaining an amendment of the charge from the convening officer. A mere mistake, however, in the name or description of the prisoner, may always be corrected by the court (e).

Objection by prisoner to charge before plea.

52. The prisoner may also offer a plea to the general jurisdiction of the court, and give evidence in support of that plea. The court will decide this question of jurisdiction in the same manner as any other question. If the plea be overruled, the court will proceed with the trial; if

Plea to jurisdiction of court.

(a) Army Act, s. 52 (4); Rule 23.

(b) Rule 70.

(c) Rule 61.

(d) Rule 15.

(e) Rules 32, 33.

it be allowed, the court must record its decision and reasons, report to the convening officer, and adjourn. If there is any doubt, the court may refer to the convening officer, or record a special decision and proceed with the trial (a).

Plea of
"guilty."

53. If the prisoner pleads guilty, the president should explain the charge to him so as to prevent his pleading guilty in consequence of ignorance of the exact nature of the charge or of the effect of the plea; and should also point out to the prisoner that with a plea of guilty there will be no regular trial, but merely a consideration of the proper amount of punishment, that he can only call witnesses as to character, and make a statement in mitigation of punishment, and that if he wishes to *prove* extenuating circumstances, or indeed to make any kind of defence whatever, he should plead not guilty (b).

Procedure
on plea of
"guilty."

54. If the prisoner, nevertheless, determines to plead guilty, the court will find him guilty, and will then proceed, if a regimental court, to take such evidence as is necessary to enable them to determine the sentence, and if a general or district court, to read the summary of evidence, and annex it to the proceedings. The prisoner may, however, call witnesses as to character, and make a statement in mitigation of punishment, and the court may allow witnesses to be called in support of that statement. The court will also take evidence as to the prisoner's character, as in the case of a conviction after a plea of not guilty (c).

Refusal to
plead, &c.

55. Where the prisoner refuses to plead, or pleads unintelligibly, or indeed pleads anything except guilty, and also where it appears to the court that the prisoner did not understand the effect of his plea of guilty, a plea of not guilty must be recorded (d). A plea of not guilty can be withdrawn by the prisoner at any time during the trial, and in such case the procedure is substantially the same as in the case of an original plea of guilty (e).

Plea of "not
guilty."

56. On a plea of not guilty, the prosecutor will, if the case is complicated, make an opening address, giving an outline of the evidence he intends to call, but abstaining from any argument and comments not required to explain the nature of the case. The duty of the prosecutor is fully

(a) Rule 34.

(b) Rule 35, and see note.

(c) Rules 36, 42. The Memorandum for the Guidance of Courts-martial, dated March 1, 1882, explains how the Army Forms of Proceedings are to be used, according to the plea of the prisoner. This memorandum will be found in M.M.L., p. 778.

(d) Rules 35, 36 (A). As to procedure where a plea of guilty is recorded to one or more of the charges in a charge sheet, and a plea of not guilty to others, see Rule 36 (B).

(e) Rule 37.

laid down and explained in Rules 38 and 59, and the notes thereon ; and it is only necessary here to observe generally, that the prosecutor is an officer of justice, whose first duty is to ascertain the truth—not to obtain a conviction independently of the truth ; and that he is bound to act with scrupulous candour and fairness towards the prisoner and the court, and to conduct the case throughout in a fair and moderate spirit. Any deviation from the above line of conduct will be at once checked by the court (a).

Duty of prosecutor.

57. On the conclusion of his address the prosecutor will call the evidence for the prosecution. The prisoner is at liberty to cross-examine the witnesses, and the prosecutor may then re-examine them on matters raised by the cross-examination (b).

Examination of witnesses for prosecution.

58. At the close of the case for the prosecution the prisoner will be called on for his defence. The course of procedure on the defence differs according to whether the prisoner does or does not call witnesses besides witnesses as to character. The procedure when he calls witnesses as to character only, is the same as when he calls no witnesses. In that case the prosecutor may first sum up his evidence, and the prisoner may then make an address in his defence, and call his witnesses (if any) as to character ; and the judge advocate (if any) will then sum up unless both he and the court think a summing up unnecessary, and the court will consider their finding.

Defence of prisoner.

59. If, on the other hand, the prisoner calls witnesses besides witnesses to character, he may make an opening address ; he will then call his witnesses, who may be cross-examined by the prosecutor and re-examined by the prisoner. The prisoner may then sum up his case in a second address, and the prosecutor may reply. After the reply of the prosecutor the judge advocate (if any) will sum up, unless both he and the court think a summing up unnecessary, and the court will consider their finding (c). In exceptional cases witnesses in reply may be called for the prosecution before the second address of the prisoner (d).

Procedure if prisoner calls witnesses other than witnesses to character.

60. The prisoner is to be allowed great latitude in making his defence, and will not, within reasonable limits, be stopped by the court merely for making irrelevant observations (e). The court must never forget that the principle of English law is, that an accused person is presumed to be innocent until proved to be guilty, and that, although there are cases where the prosecution may, by

Latitude allowed in defence.

(a) See Rule 59 and note.

(b) See Rule 38 and note.

(c) Rules 39-41, 66.

(d) Rule 54 (B).

(e) Rule 59 (C).

proving certain facts, raise a presumption of guilt which the prisoner must rebut, yet, speaking generally, the burden of proof lies on the prosecution, and any doubt as to the sufficiency of proof must be decided in the prisoner's favour.

Court not to be influenced by supposed intention of convening officer.

61. The court, in considering their decision, should not allow themselves to be influenced by the consideration of any supposed intention of the convening officer in sending the case for trial. It may be very right to send for trial a prisoner, who, when tried, ought to be acquitted, and therefore, an acquittal is not in itself a reflection on the convening officer. Even if it were, this should not lead a court to convict, unless the evidence establishes the charge to their satisfaction.

Friend of prisoner.

62. The prisoner is allowed to have a friend to assist him, who may be either a legal adviser or any other person. If the friend is a solicitor or any person other than a barrister or an officer subject to military law, he can only advise the prisoner and suggest questions to be put by the prisoner to witnesses; but if he is an officer subject to military law, he has the same rights and duties as counsel have under the Rules (a).

Counsel.

63. Formerly counsel, though they could appear as advisers either of the prosecution or of the defence, could not address the court or examine witnesses orally. But now, by Rules 86-92, counsel who appear on behalf of either prosecutor or prisoner, have the same rights as to addressing the court, examining witnesses, and generally, as the persons whom they represent. A prisoner defended by counsel or by an officer may, however, make a statement, giving his own account of the subject of the charges, but cannot be sworn or cross-examined on it (b). The rights and conduct of counsel are regulated by the above-mentioned Rules, and by the Army Act which provides a mode of enforcing the provisions of the Rules and due respect for the court (c).

Examination of witnesses.

64. Every witness whether for the prosecution or defence is required either to be sworn or to make a solemn declaration (d). All questions are to be put to the witness direct by the prosecutor, prisoner, or judge advocate, but the witness, in replying, will address the court, and not the prosecutor or prisoner. If any improper question is addressed to the witness, the prosecutor, or prisoner, or judge advocate, or a member of the court, should object

(a) Rule 85.

(b) Rule 92.

(c) Army Act, s. 129.

(d) Rule 80. With respect to the examination, cross-examination, and re-examination of witnesses, see further, Rules 82-84, and Chapter IV, paras. 104-119.

to the question before the witness answers it, and the objection will be disposed of before the witness answers (a). During the discussion on any such objection the witness may be ordered to withdraw. When not under examination, witnesses should not, as a rule, be allowed to be in court (b).

65. The evidence of every witness is to be read over to him before he leaves the court, and he may offer, or be called on by the court, to explain or to reconcile answers which may appear inconsistent. The explanation can be entered on the proceedings, only as an addition to the evidence previously recorded, and any discrepancy must, for the sake of justice, and for the information of the officer whose duty it is to confirm the sentence, still appear, although the apparent contradictions may have been satisfactorily explained. Each party is allowed to question the witness as to such explanation (c).

Evidence to be read over to witnesses.

66. At the request of the prosecutor or prisoner, a witness may be recalled by leave of the court at any time before the time for the second address of the prisoner. And where the prisoner's witnesses have introduced new matter which the prosecutor could not reasonably have foreseen, he can, with the leave of the court, call or recall a witness to give rebutting testimony. The court can call or recall a witness at any time before the finding, but they should exercise this power with caution; and if they do exercise it, they should put to the witness any question which they are requested by the prosecutor or prisoner to put, unless they consider the question irrelevant (d). The court can also at any time put questions to witnesses, and should ordinarily put any question which the prosecutor or prisoner requests to be put after the conclusion of the re-examination or cross-examination (e).

Recalling witnesses.

67. The allowances for the expenses of both military and civilian witnesses in attending courts-martial, are regulated by the Army Allowance Regulations; to which reference must be made (f).

Expenses of witnesses.

68. With regard to claims of civilian witnesses abroad, a Treasury letter issued in 1833 directs that in places where there is a tariff regulating the amount of allowance to witnesses before a civil court, or any other established mode of dealing with the claims of such witnesses, such

Of civilian witnesses abroad.

(a) Rule 31 (A).

(b) Rule 79.

(c) Rule 81 (B).

(d) Rule 84.

(e) Rule 83, and see Rule 84 (D).

(f) With respect to the scale of allowances for civilian witnesses in England, see the scale for witnesses before courts of assize, laid down by regulations issued by the Home Secretary, under 14 & 15 Vict. c. 55.

tariff or established practice is to be made the criterion of settlement; the president of the court certifying in each case that the sum is in conformity thereto. If there is no such tariff or practice, the actual travelling expenses according to the station in life of the witness, and a daily allowance for subsistence on the road and during necessary detention (depending on the station in life of the witness, and other special circumstances, and in no case exceeding 10s. a day) may be allowed; but no allowance whatever will be made to persons residing at or within a convenient distance of the place where the court sits (*a*).

Interpreter.

69. In India, if an interpreter be required, a qualified military officer is usually appointed. In the colonies, courts-martial usually call on the interpreters to the civil courts, where their services are available. A member of the court-martial is not disqualified from acting as interpreter, and may do so with advantage where the evidence to be interpreted is not likely to be protracted; but it is obvious that his acting as such through any extended proceedings might bring him into collision with the parties, and be otherwise inconvenient.

Remarks on
employment
of inter-
preter.

70. The greatest caution should be exercised to ensure faithful translation, and to guard against misconception of the true meaning of any expression, either from the incompetence, or from the possible bias, of the person employed to interpret. The interpreter should render the very words as closely as possible, and not run the risk of obscuring the proper force of an expression by attempting to give the corresponding idiom, and the court may call on him to explain any part of his translation, and may refer to a second interpreter, if they should entertain any doubt, or be desirous of further information. Upon a question being raised as to the precise meaning of the words used by a witness, they should instantly be taken down in the equivalent English character, when the language has a peculiar alphabet, or, as near the sound as may be, when it is not a written language (*b*). A party to the trial is at liberty to request the presence and assistance of a private interpreter, and may apply to the court to hear his version of the precise meaning of the witness's words, or an illustration on his part of any phrase which admits of a second construction; and the court will, according to the circumstances of the particular case, decide on the application, neither allowing unnecessary interruption on the one hand,

(*a*) Treasury letter of 29th April, 1833.

(*b*) There are other cases where it would be desirable to retain the original words in the proceedings, but it should in no case be allowed to remain without a translation, as many words which present no difficulty on the spot, may yet be wholly unintelligible to the confirming authority.

nor restricting the accurate investigation required by justice on the other.

71. The court can deliberate in private, and may either withdraw for the purpose or cause the court to be cleared (a); but at other times the court must be open to the public, military or otherwise, so far as the room or tent in which the court is held can receive them. It is not usual to place any restriction on the admission of reporters for the press.

Court is open, but may be closed for deliberation.

72. A member of a court who has been absent during any part of the evidence ceases to be a member (b).

Absence of member.

73. Every member of the court is bound to give his opinion on any question which comes before the court, and cannot abstain from voting. The opinions of members are taken in order, beginning with the junior in rank (c).

Member cannot abstain from voting.

74. The court must consider their finding in closed court; and the finding on each charge must be taken and recorded separately. The finding on a charge will be "guilty" or "not guilty," or "not guilty, and honourably acquit him of the same;" but the court may by a special finding find the prisoner guilty subject to a statement of exceptions or variations. If the court doubt whether the facts proved amount in law to the offence charged, they may refer to the confirming authority before recording their finding (d). In the case of certain specified offences, a prisoner charged with one offence may be found guilty of a cognate offence though not charged: for example, a prisoner charged with stealing may be found guilty of embezzlement and *vice versa* (e). A recommendation to mercy will be recorded in the proceedings, with the reasons of the court, and promulgated and communicated to the prisoner; but, save as provided by the Rules, any expression of opinion as to anything occurring before the court, and any matter which the court may desire to report, must be stated in a separate paper (f).

Finding.

75. If the court find the prisoner not guilty of all the charges, they will pronounce their finding in open court, and the prisoner will be discharged (g).

Of "not guilty."

76. If, on the other hand, the court find the prisoner guilty of any charge, they will proceed to consider their sentence; though before doing so, all the charges in all the charge sheets (if more than one) must, unless otherwise

Of "guilty."

(a) Army Act, s. 53 (5), Rule 62.

(b) Rule 67.

(c) Rule 68 (C).

(d) Rules 42, 43, and App. II to Rules. Form of Proceedings, par. (8), p. 526.

(e) Army Act, s. 56.

(f) Army Act, s. 53 (9). See note, Rules 48, 63 (E).

(g) Army Act, s. 54 (3).

directed by the convening officer, be tried : and one sentence only can be awarded in respect of all the offences of which the prisoner is found guilty (*a*).

Evidence of former convictions.

77. The court should, unless it seems to be impracticable, before considering their sentence take evidence of the prisoner's former convictions (if any), and of the other particulars mentioned in Rule 45.

Wording, date, and signature of sentence.

78. The sentence must be one of those allowed by the Army Act (*b*). Consequently, a non-commissioned officer cannot be sentenced to a reprimand, nor can an army schoolmaster be sentenced to reduction to the ranks. The sentence should follow the forms given (see Appendix II to the Rules), or if no form seems exactly applicable, should follow as nearly as possible the terms of the Army Act, and it will be dated and signed by the president. If there is a judge advocate, he also will sign the proceedings. The proceedings will then be sent for confirmation (*c*).

Proceedings of court.

79. The "proceedings" are an entire record of the whole of the transactions of the particular court (*d*). They are kept under the orders of the judge advocate or president, who is responsible for their accuracy and completeness. The form in which they are required to be recorded will be found at pages 514-34.

General observations on duty of a court-martial in awarding sentence.

80. In deliberating on their sentence a court-martial should ever remember that the object of awarding punishment is the maintenance of discipline, and should bear in mind the considerations to which their attention is directed by the Queen's Regulations, 1885 (*e*). The proper amount of punishment to be inflicted is the least amount by which discipline can be efficiently maintained. While the exigencies of discipline, apart from the circumstances of the particular case, may render a severe sentence necessary, yet the court should not inflict a severe sentence merely because it has the power of a general court-martial ; and if a general court-martial is of opinion that the case is one for which a sentence of a month's imprisonment is sufficient for the maintenance of discipline, the court should not inflict a heavier sentence merely because the court is a general court-martial. So, again, if the prisoner has appealed from the award of his commanding officer, his punishment should not on that ground be increased ; in fact, except for some reason independent of the appeal, it can hardly ever be necessary in ordinary circumstances

(*a*) Rule 47.

(*b*) See s. 44; and as to Indian officers, s. 180 (2); as to warrant officers, s. 182; and as to non-commissioned officers, s. 183.

(*c*) Rule 49.

(*d*) See Rules 44, 93-98.

(*e*) Q.R., 1885, Sect. VI, para. 99.

that the court should give a heavier sentence than that which the commanding officer has the power to award.

81. Where several offenders are found guilty of the same offence, it may often be proper to award different degrees of punishment. In some cases it would appear that the degrees of criminality of the offenders are different; while in others regard will be paid to their relative rank. For example, a non-commissioned officer should as a rule be more severely punished than a private soldier concerned with him in the commission of the same offence. Joint offenders.

82. The court has power to punish a prisoner for contempt, but its members should not allow themselves to award an unduly severe punishment through irritation at the conduct of the prisoner on his trial, or in consequence of the nature of his defence. If persons mixed up in the transaction forming the subject of the trial have been witnesses at the trial, the prisoner is entitled to impeach their motives and charge them with criminality; and if he oversteps the boundary of propriety in this respect, by making entirely groundless charges against them, or against other innocent persons, he can, if necessary, be tried for making false accusations (a). Further observations.

83. Offences, considered in reference to the award of sentence, may be committed with or without premeditation, and with or without provocation; and beginning with the highest degree of criminality may be classified as follows: Further observations; classification of offences.

- (1.) Offences committed with premeditation and without provocation:
- (2.) Offences committed with premeditation and with provocation:
- (3.) Offences committed without premeditation and without provocation:
- (4.) Offences committed without premeditation and with provocation.

In cases of doubt as to the proper amount of punishment to be awarded, it will be useful to bear in mind this classification.

84. Another material element in crime in reference to the individual is its frequency; in other words an habitual offender deserves far greater punishment than an infrequent offender; and in every case if possible the first offence should be treated leniently. Repeated offences of individual.

85. Military offences, however, must be considered in reference to circumstances other than those immediately connected with the individual offender. When crime is prevalent an example may be necessary, and a severe General prevalence of crime.

(a) See s. 27, and Rule 59 (C), and notes.

punishment may justly be awarded in respect of an offence which otherwise would receive a more lenient punishment. In such cases the punishment for the offence must be regarded in reference to the effect to be produced on the military body to which the offender belongs, rather than in reference to the act of the individual himself.

Insubordinate
language.

86. Military offences, unlike civil offences, frequently consist in words, *e.g.*, the use of insubordinate language. As a general principle, the improper use of words should not be treated with the same severity as offences consisting in acts. Further, great care should be taken in discriminating between mere angry or irritable expressions, and words indicating a deliberate intention to be insubordinate or to resist lawful authority. A soldier frequently uses violent language which is a mere outburst of momentary irritation or excitement, without at all intending to be insubordinate. Again, allowance must be made for the coarse expressions which a man of inferior education will often use as mere expletives. Such expressions may be insubordinate if used to a commissioned officer, and not so when used to a non-commissioned officer, or when used under one set of circumstances, and not when used under another. Language therefore should be construed with due regard to all surrounding circumstances; and the intention of the man in using it should be carefully considered, before it is held to constitute the grave offence of using threatening or insubordinate language to a superior officer.

Discipline,
how best
maintained.

87. In all cases the whole corps should have an opportunity of seeing that the punishment awarded to any individual is not more than is necessary, in the interests of the corps itself, for the maintenance of discipline. Without discipline all military bodies become mobs, and worse than useless; but discipline enforced by punishment alone is a poor sort of discipline, which would not stand any severe strain. What must be aimed at is that high state of discipline, which springs from a military system administered with impartiality and judgment, so as to induce in all ranks a feeling of duty, and the assurance that, while no offence will be passed over, no offender will be unjustly dealt with.

Recommendation
to mercy.

88. As the court have (save in the case of conviction of an officer under s. 16 of the Army Act, for conduct unbecoming an officer and gentleman, and in the case of a conviction for murder under s. 41 (2)) absolute discretion as to the sentence, a recommendation to mercy will be exceptional (a). It will usually be required only where

(a) Army Act, s. 53 (9), Rule 48.

the offence is in itself very serious, and where the court though unwilling to pass a lenient sentence, lest the offence should be considered a venial one, think that, owing to the prisoner's character or other exceptional circumstances, he should not suffer the full penalty which the offence would ordinarily demand. As a rule, the court will be able to adjust the sentence according to what in their judgment the prisoner should suffer, having regard not only to the offence, but to the attendant circumstances and his character, so that the award may be final and carried into effect. It is indisputable that crimes are more effectually prevented by certainty than by severity of punishment.

(iii.) *Proceedings subsequent to Finding and Sentence of Court-Martial.*

89. The acquittal of a prisoner by a court-martial on any charge is final, but a conviction and sentence are not valid until confirmed by superior authority (a). Where there is a judge advocate he is responsible for transmitting the proceedings for confirmation : where there is not a judge advocate, this duty devolves on the president.

Confirmation of proceedings.

90. The finding and sentence of a regimental court-martial are to be confirmed by the convening officer, or by the officer having authority to convene the court at the time of the submission of the proceedings (b).

Of regimental court-martial.

91. The finding and sentence of a district court-martial are to be confirmed by an officer authorised to convene general courts-martial, or deriving authority to confirm them from an officer authorised to convene general courts-martial (c).

Of district court-martial.

92. The finding and sentence of a general court-martial are to be confirmed by Her Majesty, or by an officer deriving authority to confirm either immediately or mediately from Her Majesty (d).

Of general court-martial.

93. This authority, where given by the Queen, is given by the warrant respecting courts-martial mentioned above. Any warrant, whether issued by the Queen or by an officer, may reserve any of the powers which would otherwise be conferred by it (e).

Warrant for general court-martial.

94. The warrant issued to a general officer in the United Kingdom does not usually give authority to confirm the findings and sentences of general courts-martial, which,

In the United Kingdom.

(a) Army Act, s. 54 (3) (6).

(b) Army Act, s. 54 (1) (a).

(c) Army Act, s. 54 (1) (c), and s. 123.

(d) Army Act, s. 54 (1) (b), and s. 122.

(e) As to promulgation of proceedings, see Rule 53, and Q.B., 1885, Sect. VI, para. 109. See para. 22, above.

(A.M.L.)

consequently, in the United Kingdom require confirmation by the Queen.

In India and elsewhere abroad.

95. The warrant issued to an officer commanding abroad usually gives authority to confirm the findings and sentences of general courts-martial, and to delegate that power. Where the officer is the Commander-in-Chief in India, and sometimes where he is Commander-in-Chief on active service, the power of confirmation is given without any reservation, except at the option of the officer. In other cases, besides the optional reservation, the warrant reserves for confirmation, if in India by the Commander-in-Chief in India, and if elsewhere by the Queen, the finding and sentence, where a commissioned officer is sentenced to death, penal servitude, cashiering, or dismissal. An officer commanding a force on active service serving in India or proceeding from India, usually holds his warrant from the Commander-in-Chief in India; but if he comes under the command of an officer holding a warrant from the Queen, he can only exercise the confirming power by delegation from that officer.

Delegation as to district court-martial.

Power of confirming authority to send back finding and sentence for revision.

96. Every officer empowered to convene general courts-martial, has authority to confirm the findings and sentences of district courts-martial, and to delegate that power (a).

97. The confirming authority can order a revision once only; and the court must reassemble and consider, without taking evidence, either the finding or the sentence, or both of them, as directed. If the finding only is sent back, and the court do not adhere to it, the court must also reconsider their sentence; but if the sentence only is sent back, they cannot revise the finding (b). If the court adhere to their finding and sentence, the confirming authority can only either confirm or refuse confirmation. A conviction and sentence are not valid until confirmation, and therefore a refusal of confirmation in effect annuls the whole proceeding, except where confirmation is withheld wholly or partly for the purpose of referring to superior authority (c).

Mitigation, remission and commutation of punishment

98. The confirming authority can, when confirming the sentence, whether after revision or without it, mitigate, remit, commute, or suspend the punishment (d). After confirmation, the punishment can only be mitigated, remitted, or commuted by the Queen, or the officer Commanding-in-Chief, or the officer commanding the district or

(a) See Forms of Warrants, M.M.L., p. 769, *et seq.*

(b) Army Act, s. 45 (2), Rule 51.

(c) Army Act, s. 54 (5) (6) and note. As to remarks by confirming officer and promulgation, see Q.R., 1885, Sect. VI, paras. 105, 106, 109, Army Act, s. 53 (9), Rule 52; 95 (A) note. A refusal to confirm should be signified in writing on the proceedings signed by the confirming authority. See also para. 6, above.

(d) Army Act, s. 57 (1) and note. Rule 53

station where the prisoner is, or any prescribed officer (a); also in India by the Commander-in-Chief either in India, or in a Presidency of India; also in a colony or elsewhere, by the officer commanding the forces. But as this power cannot be exercised by any officer inferior to the authority who confirmed the sentence, an officer in the United Kingdom has no power to mitigate, remit, or commute a sentence passed by a general court-martial in the United Kingdom; and in the case of general courts-martial held elsewhere, can only do so if his command is not inferior to that of the officer who confirmed the sentence, unless in either case he acts under orders from superior authority.

99. Sentence of death in a colony requires not only confirmation by the military authority, but also (save when passed in respect of an offence committed on active service) approval by the governor of the colony. In India, however, such approval is only required where the offence is treason or murder; but both in India and a colony a sentence of penal servitude for any offence tried as a civil offence under s. 41, requires the approval of the governor. The approval may be given in India either by the Governor-General or by the Governor of the Presidency within which the prisoner is tried (b).

Approval of sentence of death in colony.

100. An officer who confirms a sentence is responsible for seeing that the sentence is carried into effect, and for this purpose he will, where necessary, obtain the approval above required for a sentence of death, and in all cases will give the necessary directions for the execution of the sentence. If the sentence is approved by the Queen, these directions will be given by the Officer Commanding-in-Chief.

Directions for execution of sentence.

101. Sentences of penal servitude, whenever passed, are (subject to the proviso mentioned in para. 103) required to be executed in the United Kingdom, and have the same effect as sentences of penal servitude passed by a civil court in the United Kingdom. Provision is made for bringing a penal servitude prisoner from any place out of the United Kingdom to a prison in the United Kingdom; and when once he is there he comes under the authority of the Home Secretary (c).

Execution of sentence of penal servitude.

102. Sentences of imprisonment exceeding twelve months, wherever passed, are also (subject to the proviso mentioned in para. 103) to be executed in the United Kingdom. If not brought to the United Kingdom, a prisoner has to undergo his imprisonment either in military custody, or in some authorised prison. He can, however, be temporarily confined in any other prison. In the

Of imprisonment.

(a) Army Act, s. 57 (2); and as to prescribed officer, see Rule 125 (C).

(b) Army Act, s. 54 (4) (7) (8) (9).

(c) Army Act, ss. 58-62.

(A.M.L.)

United Kingdom sentences of imprisonment may be undergone in military custody, *i.e.*, in a provost prison; but where they exceed forty-two days, or the limit prescribed from time to time for sentences to be passed in provost prisons, can be undergone only in public prisons, whether civil or military (*a*).

Further
provisions.

103. An offender sentenced to either penal servitude or imprisonment need not be brought to the United Kingdom, if he belongs to a class with respect to which the Secretary of State has declared that by reason of climate or place of birth or of enlistment, it is not beneficial to the prisoner to transfer him to the United Kingdom. Nor need an offender sentenced to imprisonment be brought to the United Kingdom, if the court or other authority mentioned in s. 131 for special reasons otherwise orders (*b*).

(*a*) Army Act, ss. 63-66. Q.R., 1885, Sect. VI, para. 162, and see for the mode in which a term of imprisonment is to be awarded, Q.R., 1885, Sect. VI, para. 101; and generally as to disposal of prisoners, military convicts, and military prisoners, &c., Q.R., 1885, Sect. VI, paras. 154-231.

(*b*) Army Act, s. 131 (2), the note to which states the declaration made by Secretary of State.

CHAPTER IV.

CHAPTER VI. IN MANUAL OF MILITARY LAW.

EVIDENCE.

Introductory (a).

1. The rules of evidence are the rules which regulate the mode in which questions of fact may be determined for judicial purposes. The object of every criminal trial is, or may be, to determine two classes of questions—questions of fact and questions of law. If the accused person pleads guilty there is no question of fact involved in the trial. But if he does not, he raises two questions or issues, first, whether the facts charged against him happened, and, next, if they did happen, what is their legal consequence.

Meaning of
"Rules of
Evidence."

2. In trial by jury these two questions are answered by different persons. The jury, *under the guidance of the judge*, find the facts. The judge lays down the law. It was with reference to trial by jury that the English rules of evidence were originally framed, and it is to this mode of trial that they are still primarily applicable. They are, in fact, the rules in accordance with which a judge guides a jury. In trials before courts-martial, the members of the court both find the facts and lay down the law, and thus perform the functions of both jury and judge. It therefore becomes their duty, when applying their minds to questions of fact, in the capacity of jurymen, to consider themselves bound by the rules which, in the case of an ordinary trial by jury, are laid down by the judge.

English rules
of evidence
primarily
applicable to
trial by jury.

3. Now, a jurymen is supposed to bring with him to the consideration of the questions which he has to try common sense, and a general knowledge of human nature and of the ways of the world. But he is not supposed to bring with him any special knowledge enabling him to answer the particular questions of fact raised in the trial. His knowledge of these matters is derived from what is proved to him at the hearing. The means of proof, or evidence, usually consists of statements made by witnesses under examination, or of documents produced for inspection, and is therefore commonly classified as being either oral evi-

Nature of
evidence.

(a) The statements of law in this chapter are mainly taken from Mr. Justice Stephen's Digest of the Law of Evidence.

dence or documentary evidence. But the jury, or, in the case of trials by court-martial, the members of the court, may supplement by direct information the knowledge derived from these sources. Thus they may inspect for themselves anything sufficiently identified by evidence, and produced in court as material to their decision; or they may go to view any place the sight of which may help them to understand the evidence.

Difference
between
judicial and
non-judicial
inquiries.

4. There is no difference in principle between the method of inquiry in judicial and in extra-judicial proceedings. In either case a person who wishes to find out whether a particular event did or did not happen, tries in the first place to obtain information from persons who were present and saw what happened (*direct* evidence), and, failing that, to obtain information from persons who can tell him about facts from which he can draw an inference as to whether the event did or did not happen (*indirect* evidence). But in judicial inquiries the information given must be on oath, and be liable to be tested by cross-examination, and there are certain rules of law which exclude from the consideration of a jury particular classes of indirect evidence which an ordinary inquirer would naturally take into consideration. Statements so excluded are said to be "not admissible as evidence," or "not evidence" (*a*). And if a member of a court-martial is in doubt whether a statement which it is proposed to make to him is, or is not, admissible as evidence, the most useful advice that can be given to him is, first to use his common sense as to whether the matter proposed to be proved has any practical bearing on the question which he has to try; and, if he thinks that it has, then to consider whether it falls within any one of the negative or exclusive rules of law to which reference has been made

Reasons for
excluding
certain
classes of
evidence in
judicial
inquiries.

5. The answer to the question why particular statements should be excluded from evidence in judicial inquiries is that their exclusion has been found by practical experience useful on various grounds, and notably on the following:—

1. It assists the jury.
2. It secures fair play to the accused.
3. It protects absent persons.
4. It prevents waste of time.

It assists the jury by concentrating their attention on the questions immediately before them, and preventing them from being distracted or bewildered by facts which either have no bearing on the questions before them, or

(*a*) The two phrases illustrate the wider and narrower sense of the term "evidence." In its narrower sense it means that kind of evidence which is recognised by courts of law.

have so remote a bearing on those questions as to be practically useless as guides to the truth, and from being misled by statements, the effect of which, through the prejudice which they excite, is out of all proportion to their true weight. It secures fair play to the accused, because he comes to the trial prepared to meet a specific charge, and ought not to be suddenly confronted by statements which he had no reason to expect would be made against him. It protects absent persons against statements affecting their characters. And, lastly, it prevents the infinite waste of time which would ensue if the discussion of a question of fact in a court were allowed to branch out into all the subjects with which that fact is more or less connected.

6. The rules of evidence to be followed by courts-martial are to be those adopted in courts of ordinary criminal jurisdiction in England (a). These rules are to be found in the ordinary text books on the subject, such as Taylor on Evidence, Roscoe's Digest of the Law of Evidence in Criminal Cases, and Mr. Justice Stephen's Digest of the Law of Evidence; but as only a limited number of these rules are from the nature of the case applicable to proceedings before courts-martial, it is thought that it may be useful to state and illustrate shortly the most important of those which are so applicable.

Evidence in courts-martial to be governed by English law.

7. The principal matters with which the rules of evidence are concerned may, for the purposes of this chapter, be classified as follows:—

Matters with which rules of evidence are concerned.

- (i.) *What must be proved.*
- (ii.) *What facts are assumed to be known* (judicial notice).
- (iii.) *By which side proof must be given* (burden of proof).
- (iv.) *What statements are admissible as evidence* (admissibility of evidence).
- (v.) *When admissions or confessions may be admitted as evidence.*
- (vi.) *Who may give evidence* (competency of witnesses).
- (vii.) *What questions need not be answered and what documents need not be produced* (privilege of witnesses).
- (viii.) *How evidence is to be given.*

(i.) *What must be proved.*

8. What must be proved, in order to obtain a conviction, is the particular charge brought. As a general rule every charge alleges, or ought to allege, a specific offence

Charge brought must be proved.

(a) Army Act, ss. 127 and 128; and see Rule 72.

constituting a breach of a specific enactment (a); and subject to certain exceptions, it is of this offence, and of this offence alone, that the person charged can be convicted. The reason for the rule is the unfairness of requiring a person to meet a charge for which he is not prepared. And the exceptions will be found not to conflict with this reason, since they relate either to cases where the distinction between two offences is mainly technical; or to cases where the distinction is one of degree, but not of kind, and the prisoner, having been charged with the more serious, is allowed to be convicted of the less serious offence. The former class of cases is illustrated by the enactments providing that a person charged with felony may, in certain cases, be convicted of a misdemeanor; and that a person charged with stealing may be convicted of embezzlement, and *vice versa*. The second class is illustrated by the common law rule that on an indictment for murder, if the prosecutor fails in proving malice prepenze, the prisoner may be convicted of manslaughter; and by the provisions contained in s. 56 of the Army Act.

Substance
only of
charge need
be proved.

9. It is the substance only of the charge that need be proved. Allegations which are not essential to constitute the offence, and which may be omitted without affecting the validity of the charge, do not require proof, and may be rejected as surplusage (b). In some cases, as in charges against a sentinel for misbehaviour on his post, or in a charge for not giving immediate notice of desertion (c), the time or place of the offence is material; but as a rule it is not so. Where the court think that the facts proved differ materially from the facts alleged, they are empowered by Rule 43 to record a special finding, instead of a finding of "Not guilty."

(ii.) *What facts are assumed to be known.*

Judicial
notice.

10. The court are said to take judicial notice, in other words not to require evidence, of any facts which are so generally known as not to require special proof. By Rule 73 the court are expressly authorised to take judicial notice of all matters of notoriety, including all matters within their general military knowledge. Thus, evidence need not be given as to the relative rank of officers, as to the general duties, authorities, and obligations of different members of the service, or generally as to any matters

(a) See Rules 9-12, and 23. As to offences of conduct to the prejudice of good order and military discipline, see s. 40 of the Army Act, and Chapter I, para. 32.

(b) See Rules 9-12, and 23, and as to particulars of time and place in the charge, see Note as to use of Forms of Charges (18)-(22), at the beginning of Appendix I to the Rules.

(c) See Army Act, ss. 6(1)(k), 14(2).

which an officer, as such, may reasonably be expected to know (a). Nor, again, would it be necessary to prove that an important battle was fought on the 18th of June, 1815.

11. Among the matters of which it is the duty of all judges to take judicial notice may be mentioned :—Acts of Parliament : the general course of proceedings and privileges of Parliament, the date and place of the sittings of each House, but not transactions in their journals ; the course of proceedings and rules of practice in the Supreme Court of Judicature ; the accession of the Queen ; the existence and title of every State and Sovereign recognised by the Queen ; the Great Seal, the Privy Seal, the Seals of the Superior Courts of Justice ; the seal of any notary-public in the British Dominions, and various other seals ; the extent of the territories under the dominion of the Crown, and the territorial and political divisions of the different parts of the United Kingdom ; the ordinary course of natural and artificial divisions of time, and the meaning of English words ; and all other matters which they are directed by any statute to notice.

Matters of which judicial notice will be taken.

(iii.) *By which side proof must be given.**

12. In considering the practice as to the burden of proof regard must be had to two rules ; *first*, that every man is presumed to be innocent until he is proved to be guilty ; and, *second*, that he who asserts the affirmative of a fact must prove it. It follows from both these rules that it is incumbent on the prosecution in the first instance to give evidence of the commission of the crime, or of facts from which the court may reasonably infer that it has been committed, and that then, but not till then, the prisoner is bound to prove any facts from which he wishes the court to infer his innocence. It occasionally happens that the two rules are in conflict, in which case the second must give way to the first. Thus, when the charge is a culpable omission or a breach of duty, the person who makes the charge is bound to prove it, though it may involve a negative, unless, as is frequently the case, the subject of the negative assertion is peculiarly within the knowledge of the prisoner, in which case he must prove it as a matter of defence. For instance, in a charge of leaving the ranks or a post without orders, absence without leave, releasing a prisoner without authority, or detaining a prisoner unnecessarily (b), it would lie on the person charged to prove that the requisite orders, leave, or authority had been given, or that the necessity

Burden of proof.

(a) See s. 6 (1) (c), 8, 10 (3), 17 and 25 (1), of the Army Act, as illustrations of matters which would be presumed to be within the general military knowledge of an officer.

(b) See Army Act, ss. 5 (1), 6 (1) (b), 15, 20 (1), 21 (1).

existed. On the other hand, when a prisoner is charged with breaking out of barracks (*a*), it would lie on the prosecutor in the first instance to prove that the prisoner was confined.

Shifting of burden of proof.

13. As the trial goes on, the burden of proof may be shifted from the prosecutor to the prisoner by the proof of facts which raise a presumption of his guilt. In considering the amount of evidence necessary to shift the burden of proof, the court has regard to the opportunities of knowledge with respect to the fact to be proved which may be possessed by the prosecutor and prisoner respectively (*b*).

Presumption of intent from unlawful act.

14. Where it is proved that an unlawful act has been committed, a criminal intention is presumed, and the proof of justification or excuse lies on the prisoner. On a charge of murder the law presumes malice from the act of killing, and throws on the prisoner the burden of disproving the malice by justifying or extenuating the act. On a charge of wilfully maiming or injuring with intent to render unfit for service, the intent will be presumed if it is shown that the act was wilfully done (*c*).

(iv.) *What Statements are admissible as Evidence.*

Rules as to admissibility of evidence.

15. It has been remarked above that there are certain rules which exclude from consideration on judicial inquiries classes of evidence which would be taken into consideration on ordinary inquiries. The most important of these negative or exclusive rules may, with reference to criminal proceedings, be stated as follows :—

Rule of relevancy.

I. Nothing shall be admitted as evidence which does not tend immediately to prove or disprove the charge.

Rule of best evidence.

II. The evidence produced must be the best obtainable under the circumstances.

To these may be added, subject to important qualifications:

Hearsay.
Opinion.

III. Hearsay is not evidence.

IV. Opinion is not evidence.

I. Rule of relevancy.

16. The form in which the first rule is expressed shows the vagueness, and, it may be added, the necessary vagueness, of its character. What classes of facts “tend immediately” to prove or disprove a charge? Or, to use a more technical expression (*d*), what facts are “relevant?”

(*a*) Army Act, s. 10 (4).

(*b*) See Stephen, Dig. Ev., arts. 95–96.

(*c*) See Army Act, s. 18 (2).

(*d*) See Rule 72 (A).

To this question no direct answer can be given. No precise line can be drawn between "relevant" and "irrelevant" facts. All that can be done is to state certain subordinate rules illustrating the kind of line which experience has induced courts to draw with respect to particular classes of facts. Common sense must supply the rest.

17. In the first place the character or general reputation of the accused person is not admissible as evidence of his guilt. This rule is most important to prevent the injustice which might arise from prejudice or unpopularity. "Give a dog a bad name and hang him," represents the popular instinct. "A man shall not be convicted because he has a bad name," says the law. For this reason the prosecutor may not give evidence of character, except to rebut evidence to a contrary effect given on behalf of the prisoner (a).

Character not evidence for prosecution.

18. On the other hand, the prisoner may call witnesses to speak generally as to his character. He may put in evidence particular instances where his conduct has been publicly approved by superior officers; or, if a soldier, may call for the defaulters' book to prove that there are no entries against him, or none of a serious character.

Character admissible as evidence for defence.

19. Evidence of general good character cannot avail the prisoner against evidence of the fact, but where some reasonable doubt exists as to his guilt, it may tend to strengthen a presumption of innocence; and where intention is a principal ingredient in the offence, or where presumptive proof only is adduced, evidence as to character, bearing on the charge, may be highly important, and serve to explain the prisoner's conduct. On a trial for treason, Lord Kenyon observed, "An affectionate and warm evidence of character, when collected together, should make a strong impression in favour of a prisoner; and when those who give such a character in evidence are entitled to credit, their testimony should have great weight with the jury." On a charge of murder, where malice is the essence of the crime, expressions of goodwill and acts of kindness by the prisoner towards the deceased, are always considered important evidence, as showing what was his general disposition towards the deceased, and leading to the conclusion that his intention could not have been that imputed to him. On a charge of stealing, character for honesty may be entitled to great weight. So also on a charge implicating the courage of a soldier, character for bravery and resolution might be of vast importance. But it would be manifestly absurd and

Effect of evidence as to character.

(a) As to reply to witnesses to character called by prisoner, see Rules 39 (D), 84 (C). The Court may also, after conviction, for their guidance in determining the sentence, take evidence as to the prisoner's character (Rule 45).

irrelevant, on a charge of stealing, to allow character for bravery to weigh in the scale of proof: or on a charge of cowardice, to be biassed by a character of honesty. General character, unconnected with the charge, though it may not weigh with the court, except in awarding punishment in discretionary cases, may essentially serve the prisoner, by influencing the superior with whom it rests to mitigate or remit the sentence.

Evidence of facts tending to show general disposition not admissible.

20. Evidence that the person accused of an offence committed a like offence or acted in a similar manner on another occasion, is not admissible merely for the purpose of showing that he has a general disposition to commit such offences. Thus, on a charge of murder, the prosecutor cannot give evidence of the prisoner's conduct in respect to other persons for the purpose of proving a bloodthirsty and murderous disposition. So, on a charge against a sentry of having been asleep on his post on a particular occasion, evidence that he had been found asleep on his post on other occasions would not be admissible for the purpose of showing that he would be likely to commit the offence; and on a charge of insubordination, evidence of insubordinate conduct on other occasions would not be admissible for the purpose of showing a tendency to insubordinate conduct.

Where several offences connected, evidence of one admissible as proof of another.

21. But where several offences are so connected with each other as to form part of an entire transaction, evidence of one is admissible as proof of another. On a charge of stealing, for example, though it is not material in general to inquire into any other taking of goods besides that specified in the charge, yet for the purpose of ascertaining the identity of the person, it is often important to show that other goods which had been upon an adjoining part of the same house and grounds, were taken in the same night, and afterwards found in the prisoner's possession. This is strong evidence of the prisoner having been near the owner's house on the night of the robbery; and from that point of view it is material. Thus, also, to prove the crime of arson, it may be shown that property which had been taken out of the house at the time of the firing was afterwards found secreted in the possession of the prisoner. So, on a charge of desertion, it may be admissible to inquire into the fact of (*not* the facts attending) a highway robbery which had been committed by the prisoner on the night on which he absented himself, and for which he had been tried and convicted by a civil court. The crime of desertion, depending on the intention not to return, might be inferred, in connection with other circumstances, from the commission of a heinous offence; and such collateral evidence is admissible to prove the intention of the accused.

22. And where intention, knowledge, good or bad faith, malice, or any other state of mind, is a necessary ingredient of the offence charged, evidence may, for the purpose of proving the existence of such a state of mind, be given of similar acts committed by the accused on different occasions. Thus, although on a charge of murder evidence as to the prisoner's disposition is, as has been stated, inadmissible, yet former attempts by him to assassinate the deceased are admissible as a proof of intention. So also evidence is admissible as to former menaces or expressions of vindictive feeling towards the deceased. Again, on a charge of uttering base coin, proof that the prisoner uttered base coin on other occasions is admissible as evidence that he *knew* the coin to be base.

Facts showing intention: knowledge, good faith, &c.

23. In support of a charge for malicious, disrespectful, or unbecoming language, addressed by word of mouth, or written to, or used of, a superior officer at a stated time, or in a particular letter, after having proved the words in the charge, the prosecutor, to show the spirit and intention of the prisoner, may prove also that he spoke or wrote other disrespectful or malicious words on the same subject, either before or afterwards, or that he published or disseminated copies of the letter set forth as disrespectful in the charge. This evidence is admissible, not in aggravation of the crime charged, but for the purpose of proving the deliberate malice or disrespect imputed in the charge; and the prisoner may give in evidence, as negating a deliberate purpose, or as palliating, though not justifying his conduct, that he had been provoked to act as he had by the conduct of his superior towards him. So, on an indictment for maliciously shooting, if it is questionable whether the shooting was by accident or design, proof may be given that at another time the prisoner intentionally shot at the same person.

Facts showing intention: (further illustrations).

24. Where intention is put in issue by the nature of the charge, as where a prisoner is charged with treason, or with a design to undermine the influence of the commanding officer, an inquiry may be allowed into the conduct and sentiments of the prisoner on particular occasions, but with reference only to the overt act laid or specified in the charge, and to the transactions proved against him. The intention of one particular act may be best evinced by other contemporaneous actions, but great caution is needed to prevent injustice to the prisoner by extending the inquiry to matters wholly unconnected with the charge. It would be the height of injustice to allow such an attack upon him as would involve the necessity of his entering unprepared and at once on the defence of every action of his life.

Facts showing intention: (further illustrations).

25. Again, where there is a question whether a person Evidence as

to motive,
preparation,
subsequent
conduct, or
consequences
admissible.

committed an offence, evidence may be given of any fact supplying a motive or constituting preparation for the offence, of any subsequent conduct of the person accused, which is apparently influenced by the commission of the offence, and of any act done by him, or by his authority, in consequence of the offence. Thus, evidence may be given that, after the commission of the alleged crime, the prisoner absconded, or was in possession of the property, or the proceeds of property, acquired by the crime, or that he attempted to conceal things which were or might have been used in committing the crime, or as to the manner in which he conducted himself when statements were made in his presence and hearing.

Acts of
conspirators.

26. In cases of conspiracy, the charge against one conspirator may be supported by evidence of anything done, written, or said, not only by him, but by any other of the conspirators, in furtherance of the common purpose. On the consideration of a charge of mutiny, or exciting mutiny, evidence of this kind may be received against a particular prisoner, after *prima facie* proof has been given of the existence of a plot, and of the connection of the accused therewith.

Statements
not forming
part of
conspiracy
inadmissible.

27. Statements of the class above described are admissible as evidence, because they form part of the transaction to which the inquiry relates (a). But a statement made by one conspirator about an act done in furtherance of a conspiracy, in other words, a statement which is merely a relation or narrative of some event forming part of the conspiracy, but is not itself part of the conspiracy, falls within the rule of hearsay, to which reference will be made hereafter, and is not admissible as evidence against another conspirator, unless made in his presence. In consequence of this distinction, the admissibility of writings often depends on the time when they are proved to be in the possession of fellow conspirators, whether it was before or after the prisoner's apprehension.

Illustrations
of evidence
admissible
on charge of
conspiracy.

28. Thus, on the trial of Watson for a treasonable conspiracy, some papers, containing a variety of plans and lists of names, which had been found in the house of a co-conspirator, and which had a reference to the design of the conspiracy, and were in furtherance of the plot, were held to be admissible as evidence against the prisoner. All the judges were of opinion that these papers ought to be received in the case, inasmuch as there was strong presumptive evidence that they were in the house of the co-conspirator before the prisoner's apprehension, for the room in which the papers were found had been locked up by one of the conspirators. And the judges distinguished

(a) See below, paras. 51, 52.

the point in this case from a case cited where the papers were found, after the prisoner's apprehension, in the possession of persons who possibly might not have obtained the papers until afterwards.

29. As, in trials for conspiracies, whatever the prisoner may have done or said at any meeting alleged to have been held in pursuance of the conspiracy may be given in evidence against him on the part of the prosecution, so, on the other hand, any other part of his conduct at the same meeting will be allowed to be proved in his behalf: for his intention and design at a particular time are best explained by a complete view of every part of his conduct at that time, and not merely from the proof of a single isolated act or declaration.

Acts and declarations of prisoner when evidence for him in conspiracy cases.

30. The meaning of the rule that the evidence produced must be the best obtainable under the circumstances, is this. No evidence which leads us to suppose that other and better evidence remains behind can be admitted, as the production of such inferior evidence suggests that there is some secret or sinister motive for withholding the better and more satisfactory evidence.

II. Rule as to best evidence.

31. The rule in question is chiefly applicable to documentary evidence, and is usually applied in the form of the two well-known sub-rules: (1) That a verbal account of the contents of a document can never be received if the document itself is obtainable: (2) That, subject to certain exceptions, a copy of a document is not admissible when the original document can be produced. In these cases the document itself is said to be primary, whilst the verbal account, or the copy, is called secondary evidence.

Rule chiefly applicable to documents. Primary and secondary evidence.

32. Primary evidence of the contents of a document is given by producing the document for the inspection of the court.

Primary evidence of document.

33. If the document is of a kind which is required by law to be attested, but not otherwise, (a), it is also necessary to call an attesting witness to prove its due execution. But this rule is subject to the following exceptions:—

Attested and unattested documents.

(a.) If it is proved that there is no attesting witness alive, and capable of giving evidence, then it is sufficient to prove that the attestation of at least one attesting witness is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

(b.) If the document is proved, or purports to be, more than thirty years old, and is produced from what the court considers to be its proper custody, an

attesting witness need not be called, and it will be presumed without evidence that the instrument was duly executed and attested.

Distinction between private and public documents.

34. The rule as to the inadmissibility of a copy of a document is applied much more strictly to private than to public or official documents.

Secondary evidence of private documents, when admissible.

35. Secondary evidence may be given of the contents of a private document in the following cases :

- (a.) Where the original is shown or appears to be in the possession of the adverse party, and he, after having been served with reasonable notice to produce it, does not do so.
- (b.) Where the original is shown or appears to be in the possession or power of a stranger not legally bound to produce it, and he, after having been served with a writ of *subpoena duces tecum*, or after having been sworn as a witness and asked for the document, and having admitted that it is in court, refuses to produce it.
- (c.) Where it is shown that proper search has been made for the original, and there is reason for believing that it is destroyed or lost.
- (d.) Where the original is of such a nature as not to be easily movable (a), or is in a country from which it is not permitted to be removed.
- (e.) Where the original is a document for the proof of which special provision is made by any Act of Parliament, or any law in force for the time being (b).
- (f.) Where the document is an entry in a banker's book, provable according to the special provisions of the Bankers' Books Evidence Act, 1879 (42 & 43 Vict., c. 11).

Secondary evidence of private documents, how given.

36. Secondary evidence of a private document is usually given either by producing a copy and calling a witness who can prove the copy to be correct, or when there is no copy obtainable, by calling a witness who has seen the document, and can give an account of its contents.

Public documents, what deemed to be.

Primary and secondary evidence of

37. No general definition of public documents is possible, but the rules of evidence applicable to public documents are expressly applied by statute to many classes of documents. Primary evidence of any public document may be given by producing the document from proper custody, and by a witness identifying it as being what it professes to be. Public documents may always be proved by secondary evidence,

(a) e.g., A placard posted on a wall, or a tombstone.

(b) These are practically treated on the same footing as public documents.

but the particular kind of secondary evidence required is in many cases defined by statute. Where a document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom is admissible as proof of its contents, if it is proved to be an examined copy or extract, or purports to be signed or certified as a true copy or extract, by the officer to whose custody the original is intrusted (a).

public documents.

38. It is provided by many statutes that various certificates, official and public documents, documents and proceedings of corporations and of joint stock and other companies, and certified copies of documents, bye laws, entries in registers and other books, shall be receivable as evidence of certain particulars in courts of justice, if they are authenticated in the manner prescribed by the statutes. Whenever, by virtue of any such provision, any such certificate or certified copy is receivable as proof of any particular in any court of justice, it is admissible as evidence, if it purports to be authenticated in the manner prescribed by law, without calling any witness to prove any stamp, seal, or signature required for its authentication, or the official character of the person who appears to have signed it (b).

Certified copies.

39. By s. 2 of the Documentary Evidence Act, 1868 (31 & 32 Vict., c. 37), it is provided that *prima facie* evidence of any proclamation, order, or regulation issued by Her Majesty, or by the Privy Council, also of any proclamation, order, or regulation issued by or under the authority of any such department of the Government or officer as is mentioned in the first column of the schedule to the Act (c), may be given in all courts of justice, and in

Provisions of Documentary Evidence Act as to certain documents.

(a) 11 & 12 Vict., c. 99, s. 14.

(b) 8 & 9 Vict., c. 113, preamble, and s. 1, and Steph., Dig. Ev., art. 79. A certificate, &c. so receivable is merely handed in to the Court by the party producing it.

(c) The schedule is as follows:—

COLUMN I.	COLUMN II.
<i>Name of Department or Officer.</i>	<i>Names of Certifying Officers.</i>
The Commissioners of the Treasury.	Any Commissioner, Secretary, or Assistant Secretary of the Treasury.
The Commissioners for executing the office of Lord High Admiral.	Any of the Commissioners for executing the office of Lord High Admiral, or either of the Secretaries to the said Commissioners.
Secretaries of State.	Any Secretary or Under Secretary of State.
Committee of Privy Council for Trade.	Any member of the Committee of Privy Council for Trade or any Secretary or Assistant Secretary of the said Committee.
The Poor Law Board.*	Any Commissioner of the Poor Law Board, or any Secretary or Assistant Secretary of the said Board.

* The functions of the Poor Law Board were transferred to the Local Government Board in 1871.

(A.M.L.)

all legal proceedings whatsoever, in all or any of the following modes:—(1.) By the production of a copy of the *Gazette*, purporting to contain the proclamation, order, or regulation: (2.) By the production of a copy of the proclamation, order, or regulation purporting to be printed by the Government printer (a), or, where the question arises in a court in any British colony or possession, of a copy purporting to be printed under the authority of the legislature of that colony or possession: (3.) By the production, in the case of any proclamation, order, or regulation issued by Her Majesty, or by the Privy Council, or by any of the departments specified in the schedule, of a certified copy or extract. Any copy or extract made in pursuance of the Act may be in print or in writing, or partly in print and partly in writing. No proof is required of the handwriting or official position of any person certifying in pursuance of the Act, to the truth of any copy of or extract from any proclamation, order, or regulation.

Special provisions of Army Act as to documents provable by copies.

40. Special provision is made by the Army Act for proving, by means of copies, attestation papers on enlistment, Queen's Regulations, Royal Warrants, Army Circulars, rules, warrants, and orders made in pursuance of the Act, records in regimental books, and proceedings of courts-martial (b).

Rules as to best evidence not applicable to distinction between direct and indirect evidence.

41. In connection with the rule as to best evidence, reference may be made to the distinction between direct and indirect evidence. By direct evidence is meant the statement of a person who saw, or otherwise observed with his senses, the fact in question. By indirect, or, as it is often called, circumstantial evidence, is meant evidence of facts, from which the fact in question may be inferred or presumed. The rule as to best evidence has no application to the difference between direct and indirect evidence. Direct evidence is not better than indirect or circumstantial evidence, the difference between them being one not of *degree* but of *kind*.

Nature and strength of circumstantial evidence.

42. From the circumstances under which crimes are ordinarily committed, it follows that direct evidence of their commission is rarely obtainable, and that in the great majority of cases reliance must be placed on circumstantial evidence. Such evidence is in no way inferior to direct evidence, and is in some respects superior to it; for it has become a proverb that "facts cannot lie," whilst witnesses may. On the other hand, it must always be

(a) By the Documentary Evidence Act, 1882 (45 & 46 Vict., c. 9), this expression is made to include Her Majesty's Stationery Office. The same Act extends the Doc. Evid. Act, 1868, to proclamations, &c., issued by the Lord Lieutenant of Ireland.

(b) Army Act, ss. 163, 165.

borne in mind that if facts cannot "lie," they may, and often do, deceive; in other words, that the interpretation which they appear to suggest is not that which ought to be placed upon them. Therefore, before the court finds a prisoner guilty on circumstantial evidence, it must be satisfied, to use the expression of a late learned judge, not only that the circumstances are consistent with the prisoner having committed the act, but that they are inconsistent with any other rational conclusion than that the prisoner was the guilty person (a).

43. The writer of a series of papers on the value and danger of circumstantial evidence, which have recently appeared in a legal paper (b), states one of the leading rules with respect to this class of evidence as follows:—
"The facts on which it is sought to found the inference of guilt must be visibly and evidently connected with the crime,"—and illustrates the rule by contrasting two groups of facts, of which the first would not, whilst the second would, constitute convincing circumstantial evidence of a crime. The characteristic difference between good and bad circumstantial evidence cannot be better explained than by quoting the passage which contains this illustration:—

Illustrations
of difference
between
good and bad
circumstan-
tial evidence.

"In one of the works on evidence there is an admirable example of a series of circumstances such as are intended to be excluded by this rule, which we take the liberty of epitomising:—

"1. The accused was a man of bad general character.

"2. He belonged to a nation characteristically regardless of human life.

"3. He narrowly escaped conviction on a charge of murder some years before.

"4. There is a strong ill-feeling between his nation and that of the deceased.

"5. He was heard to make exclamations in his sleep indicating a consciousness of having committed some terrible deed.

"6. The deceased was robbed, and the accused is proved to be notoriously greedy about money.

"It is scarcely necessary to say that, if a series of such circumstances were indefinitely accumulated, it would fail to produce in a sane mind a conviction that the accused was guilty. There is no visible *ligamen* between these facts and the fact sought to be established that the accused committed the murder, as all the facts are perfectly consistent with his innocence. Contrast such circumstances with such as ordinarily present themselves

(a) Baron Alderson in *Hodges case*, 2 Lewin, C. C., 227.

(b) *Law Journal*, Oct. 11, 1879.

"in strong cases of circumstantial evidence. Let us take, for instance, the following series of facts :—

"1. The deceased was found apparently murdered by a pistol bullet, which penetrated the skull.

"2. On the ground near the body was found a small fragment of a newspaper, which smelled strongly of burnt powder, and led to the supposition that it had been used in separating the powder from the ball; and on the accused being arrested there was found another piece of newspaper, which corresponded minutely at the point where it was torn with that found near the body of the deceased.

"3. In a pond near the scene of the murder was found a pistol, which had evidently been only recently thrown into the water, and into which the bullet fitted.

"4. The pistol was proved to have belonged to a gentleman in the neighbourhood; but it also appeared that the prisoner was a servant in his employment, and that the pistol was missed the day before the murder from among several fowling pieces, pistols, powder flasks, and other articles connected with the paraphernalia of the sportsman, which were arranged in a small room in the gentleman's house devoted to the purposes of sport. It was a part of the prisoner's duty to keep this room and its contents in order.

"5. When asked whether he ever saw the pistol, he denied it.

"On the prisoner were found two bank notes, which were proved to have been given to the deceased in part payment for a horse sold by him to a neighbour.

"The first of these facts at once suggests suspicion against the accused. As the second and subsequent circumstances are disclosed, the suspicion becomes intensified; and, as the narrative goes on, the strong apparent connection between the facts and the crime rapidly culminates, until, even before the last of them is reached, the climax of moral certainty is attained, and the mind is forced to accept the conclusion that the accused was the perpetrator of the crime."

44. The rule which requires production of the best obtainable evidence does not require the strongest possible assurance; in other words, does not require the fullest proof of which the case will admit, nor the repetition of evidence beyond that which is sufficient to establish the fact. For instance, it is not necessary, in order to prove handwriting, to call the writer himself; nor, if a whole regiment should be present at some overt act of mutiny or insubordination, as the striking a commanding officer in front of his regiment, would the law require the production of all the persons present; for if one witness only

Best evidence does not mean strongest possible assurance.

were produced, and if, from his situation at the moment of the occurrence, he had as favourable an opportunity of observing what took place as any person present, his evidence would be complete, and not inferior in kind to any that could be produced.

45. On the same principle the law admits as sufficient the testimony of one credible witness, subject to statutory exceptions in the case of treason and treason-felony; and to the exception that in a trial for perjury one witness alone is not sufficient, without some material and independent corroborative evidence in proof of the statement as to which the perjury is charged, because, otherwise, there is only the oath of one witness against the oath of the person accused. The evidence of a single accomplice is in law sufficient for a conviction, but such evidence must be received with extreme caution, and unless corroborated (see para. 85) should not be accepted as proof of a prisoner's guilt.

Number of witnesses requisite.

46. The rule as to best evidence says that second-best evidence shall not be produced if better evidence can be found. The rule as to hearsay goes a step further, and says that certain classes of second-best evidence shall not be produced under any circumstances. The term "hearsay" is primarily applicable to what a witness has heard another person say with respect to facts in dispute. But it is extended to all statements, whether reduced to writing or not, which are brought before the court, not by the authors of the statements, but by persons to whose knowledge the statements have been brought. The reasons for excluding such statements are, first, that they are not made on oath; and, secondly, that the person to be affected by the statement has no opportunity of cross-examining its author. The rule has been often criticised on the ground that it sometimes excludes the only means of proof obtainable under the circumstances; but its utility in excluding irresponsible proof is obvious (a). It is subject to various limitations or exceptions, the most important of which will be noticed below.

III. Rule as to hearsay.

47. The rule as to hearsay in its narrower sense may be stated as follows:—"No verbal statements with reference to a person charged with an offence, relative to the charge, made in his absence, can be received in evidence against him." The rule, which in this form has recently been described on high authority (b) as "a rule of the most

Form of rule as to hearsay in narrower sense.

(a) "Hearsay evidence, as a general rule, is not admissible, and it is not admissible because one knows to what extent people will be and are disposed to speak untruly, even without any motive whatever, and one knows what little importance can be attached to any rumour or anything stated as mere hearsay."—James, L.J., in *Polini v. Gray*, L. R., 12 Ch. Div., at p. 425.

(b) The late Chief Justice Cockburn, in his letter on Bedingfield's case (*Vacher and Sons*, 1879.)

comprehensive and all but inflexible character," is subject to two main exceptions : first, the admissibility of so-called "dying declarations ;" and, secondly, the admissibility of statements forming part of what is known by the name of the "*res gestæ*"—that is to say, of the fact, or set of facts, or transaction forming the subject of judicial inquiry.

Statements made in presence of prisoner not excluded.

48. It will be observed that the rule does not exclude evidence as to statements made in the presence of the prisoner (a), but it must be recollected that evidence of any such statement, although admissible as showing the conduct of the prisoner when he heard the statement, is not evidence that the statement was true ; e.g., evidence that A.B. said to the prisoner "you stole C's. watch" is admissible to show the prisoner's conduct on hearing that accusation, but is not evidence to prove that the prisoner did in fact steal the watch as alleged.

Dying declarations.

49. The first of the two exceptions above referred to is that relating to dying declarations, which are admissible only in trials for murder or manslaughter. In such trials a declaration made by the person killed as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, is admissible as evidence, if it is proved that the declarant, at the time of making the declaration, was in actual danger of death, and had given up all hope of recovery. "Dying declarations," said Mr. Justice Byles in a recent case (b), "ought to be admitted with scrupulous, I had almost said with superstitious care. They have not necessarily the sanction of an oath ; they are made in the absence of the prisoner ; the person making them is not subject to cross-examination, and is in no peril of prosecution for perjury. There is also great danger of omissions and of misrepresentations, both by the declarant and the witness. To make a dying declaration admissible, there must be an expectation of impending and almost immediate death from the causes then operating. The authorities show that there must be no hope whatever."

Dying declarations illustrations of rule.

50. The circumstances under which, in trials for murder statements by the person alleged to have been murdered as to the cause of his death are and are not admissible as evidence against the prisoner, may be illustrated by the following cases :—

(a.) At the time of making the statement the deceased had no hope of recovery, though his doctor had,

(a) As to confession of an accomplice made in the prisoner's presence, see below, para. 78.

(b) *R. v. Jenkins*, L. R. 1 C. C. R., at p. 193, cited with approval by the late Chief Justice Cockburn in his letter on Bedingfield's case.

and he lived ten days after making the statement. The statement was admitted as evidence (a).

- (b.) The deceased, at the time of making the statement (which was written down), said something which was taken down thus: "I make the above statement with the fear of death before me, and with no hope of recovery." On the statement being read over, she corrected this to "with no hope at present of my recovery." She died thirteen hours afterwards. The statement was not admitted as evidence (b).
- (c.) A woman alleged by the prosecutor to have had her throat cut, and so to have been killed by the prisoner, was seen some ten or fifteen minutes before her death, coming from her house, at a distance of from twenty-five to thirty yards from her door, holding her apron to her throat; when, meeting a woman who was coming towards her, she exclaimed "Oh, dear, Aunt! see what Bedingfield" (the prisoner) "has done to me." The judge was not satisfied that the deceased was conscious of the immediate approach of death. The statement was not admitted as evidence (c).

51. Passing to the second of the two exceptions above referred to, the rule is, that where a statement is part of the *res gestæ* or transaction constituting the offence, then whether it is or is not made in the presence of the prisoner, it is admissible as evidence against him. "Words uttered during the continuance of the main action, whether by the active or the passive party, though they cannot amount to acts for which the accused can be held responsible, yet may so qualify or explain the acts which they accompany, that they become essential for the due appreciation of them. . . . Even where the accused is no longer present, if the words are the immediate and natural effect and consequence of continuing action on his part, though uttered out of his hearing, they may well be considered as part of the transaction" (d).

52. There is no difficulty in understanding the general principle on which such statements are admitted, but there is sometimes great practical difficulty in determining how long the "transaction" ought to be considered as continuing, and what ought to be treated as "the immediate

Statements
forming part
of *res gestæ*.

Statements
forming part
of *res gestæ*:
illustrations
of rule.

(a) *R. v. Mosley*, 1 Moo. C. C. 97. This and the next case are cited as illustrations by Stephen, Dig. Ev., art. 26.

(b) *R. v. Jenkins*, L. E. 1 C. C. R. 187.

(c) *R. v. Bedingfield*, as stated by the late Chief Justice Cockburn in his letter on this case. The case is reported in 14 Cox Crim. Ca. 341.

(d) Cockburn, C. J., in his letter on Bedingfield's case, p. 19.

and natural effect of continuing action. Thus, in *Bedingfield's* case, as stated above, the deceased woman's exclamation was not admitted as part of the *res gestæ*, though it would seem that if she had been running away from the prisoner at the time when it was uttered, it would have been admissible. In another case (a), which has been the subject of much discussion, the facts appear to have been as follows :—A man is knocked down by a passing cab, and afterwards dies from the injuries thereby occasioned. Just after the accident, the prisoner, the driver of the cab, being then out of sight and out of hearing, a person who had not witnessed what had occurred comes up, and inquires into the matter, and the deceased makes a statement to him. The statement was admitted as evidence, but the propriety of its admission has been much questioned.

Application
of rule to
trials for
rape.

53. In trials for rape, evidence is always allowed to be given as to the fact that, shortly after the commission of the offence, the person against whom the offence was committed made a complaint about it, but not as to the particular terms of the complaint (b).

Statements
as to bodily
or mental
feeling
admissible.

54. When it is intended to prove the bodily or mental feelings of a person at a particular time, evidence may be given of the usual expression of such feelings made by him at that time (c). Thus, in the *Rugeley* poisoning case, statements made by the deceased before his illness as to his state of health, and during his illness as to his symptoms, were admitted as evidence against the prisoner.

Declaration
of deceased
person
against
interest.

55. A declaration made by a person since deceased against his pecuniary or proprietary interest is admissible (d).

Statements
made in
course of
business by
person since
deceased.

56. A statement, written or oral, or an entry, which it is the duty of a person to make in the ordinary course of his business or professional employment, is admissible as evidence after his death, provided it is made contemporaneously with the act to which it relates. But it is only admissible to prove those facts which it was the duty of the person making the statement or entry to include in it, and of which he had personal knowledge. Thus, where on a trial for murder it appeared that the deceased, a constable, had, in the course of his duty, made, shortly before his death, a verbal statement to his superior officer as to where he was going, and what he was going to do, it was

(a) *R. v. Foster*, 6 C. and P. 325, referred to in the letter on *Bedingfield's* case, p. 8.

(b) *R. v. Osborne*, Car. and Marsh, 622. Letter on *Bedingfield's* case, p. 21, Stephen, Dig. Ev., art. 8.

(c) See Stephen, Dig. Ev., art. 11.

(d) Stephen, Dig. Ev., art. 23.

held that this statement, which was to the effect that the deceased was going to watch the prisoner, was admissible (a).

57. It may sometimes happen that a material witness, who has given evidence at the preliminary inquiry, cannot attend at the trial. In proceedings before a civil court for indictable offences, provision is made for such cases by a statute (b) which enacts that the deposition may be read as evidence, on proof that the witness is dead, or so ill as not to be able to travel, that the deposition was taken in the presence of the accused person, that the accused then had a full opportunity of cross-examining the deponent, and further, on *prima facie* evidence that the deposition is signed by the justice by or before whom it purports to be taken. This provision would be applicable where such depositions are required by a court-martial on a trial for an offence under s. 41 of the Army Act.

Admissibility of deposition.

58. There is no provision making the summary of evidence taken before a commanding officer, when a prisoner is remanded for trial by court-martial, evidence under the same circumstances as depositions taken before magistrates. Accordingly the summary cannot be admitted as evidence of the facts recorded by it. But where a statement recorded in the summary of evidence is put in issue before a court-martial, as, for example, where a discrepancy is alleged between the statement made in the summary, and the evidence given before a court-martial; or where the alleged wilful falsehood of such a statement becomes the occasion of a trial by a court-martial, the summary, if purporting to give the *verbatim* statement of the witness, may be given in evidence as confirmatory of the statement having been made.

Summary of evidence, how far admissible.

59. The rule excluding hearsay evidence is, as has been seen, applicable to written or documentary, as well as to oral evidence. The statement of a person who is not called as a witness is none the less "hearsay" because it has been reduced to writing, and is offered in that form to the court. But in its application to documents of a public or official character, the rule is subject to very important qualifications. In the case of many such documents, the statements which they contain are, either under the general law, or under express statutory provisions, admissible as evidence of the matters to which they relate.

Application of hearsay rule to documentary evidence.

60. Thus, by the general law, a statement of any fact of

Recitals of public facts

(a) See Stephen, Dig. Ev., art. 27, under 42 & 43 Vict., c. 11, where an entry is made in an ordinary banker's book in the usual and ordinary course of business, a copy of the entry is evidence of the entry and of the matters therein recorded.

(b) 11 & 12 Vict., c. 42, s. 17. See also Stephen, Dig. Ev., arts. 140, 141, and 20 & 21 Vict., c. 35, s. 6.

or state-
ments, pro-
clamations,
&c.

a public nature, if made in any recital in a public Act of Parliament, or in any Royal proclamation, or speech in opening Parliament, or in any address to the Crown of either House of Parliament, is admissible as evidence of that fact.

Entry in
public record
made in
performance
of duty.

61. So also an entry in any record, official book, or register kept in the British dominions, or at sea, or in a foreign country, made in proper time by any person in the discharge of any duty imposed on him by law, is admissible as evidence of the facts to which it relates.

Special pro-
visions of
Army Act.

62. And, under the special provisions of the Army Act, attestation papers, letters, returns and documents respecting service, army lists, gazettes, warrants and orders made in pursuance of the Act, records in regimental books, descriptive returns, and certificates of conviction or acquittal, are made evidence of the facts stated by them (a).

IV. Rule as
to opinion,

63. The general rule is that the opinion or belief of a witness is not evidence. A witness must depose to the particular facts which he has seen, heard, or otherwise observed, and it is for the court to draw the necessary inferences from those facts. Thus a witness may not on a trial for desertion characterise the prisoner's absence as "desertion." This is a matter of inference, and is the point which it rests with the court to determine according to the evidence. The examination of the witness should be confined to the fact of the prisoner's absentsing himself, and to such other facts relevant to the charge as may be within the *knowledge* of the witness.

Exception in
case of
experts.

64. The chief exception to this rule relates to the evidence of experts. The opinion of an expert, that is to say, a person specially skilled in any science or art, is admissible as evidence on any point within the range of his special knowledge.

Medical
experts.

65. Thus, in a poisoning case, a doctor may be asked as an expert whether in his opinion a particular poison produces particular symptoms. And, where lunacy is set up

(a) See Army Act, ss. 163-165. Note the distinction between the provision making the copy evidence of the original, as an exception from the rule as to best evidence (*e.g.*, s. 163 (1) (c)), as to copies of the Queen's Regulations, Royal Warrants, &c.), and the provisions which make the document, as an exception from the rule as to hearsay, evidence of the facts to which it relates; also the distinction between a document being evidence of certain facts and (as a letter or record) evidence of the statement of those facts by some person.

The statements in the text, particularly in para. 59, as to the admission of documents, do not exclude the admission in evidence of documents which are part of the *res gestæ*. If, *e.g.*, a prisoner is charged with embezzlement, the books which it was his duty to keep are admissible in evidence as part of the transaction under investigation, and the entries made by him or under his authority in those books will be evidence against him, as part of his conduct in relation to such transaction, and as raising presumptions which he must explain.

as a defence, an expert may be asked whether in his opinion the symptoms exhibited by the alleged lunatic commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of their acts or of knowing that what they do is either wrong or contrary to law. But in neither of those cases could the expert be asked whether the particular symptoms in fact existed in the particular case (a).

66. An officer may be asked, as an expert, to give his opinion on a point within his special military knowledge, but, to make his opinion admissible, his knowledge must be of a kind not possessed by the court generally. Thus, in a trial before a court-martial, it is not proper to ask a witness for an opinion depending on military science generally, though it may be perfectly proper to put questions involving opinion to an engineer as to the progress of an attack, or to an artillery officer as to the probable effect of his arm, if directed as assumed; since these matters, though having reference to military science, are not of such a nature as to be presumably known to each member of a court-martial.

Experts in military science.

67. With respect to handwriting it has been specially provided by statute (b) that comparison of a disputed handwriting with any writing, proved to the satisfaction of the court to be genuine, is permitted to be made by witnesses, and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness, and otherwise, of the writing in dispute. It must, however, be borne in mind, that writing made for the special purpose of comparison is not unlikely to be disguised. The comparison may be made either by a person acquainted with the handwriting, or by an expert in handwriting, or by the court itself. A witness may be required to read writing or to write in the presence of the court.

Experts in handwriting.

68. The rule which requires a witness to state what he knows, and not what he thinks, does not require him to depose to facts with an expression of certainty that excludes all doubt in his mind. For example, it is the constant practice to receive in evidence a witness's belief of the identity of a person or thing, or of the fact of a certain handwriting being the handwriting of a particular person, though he will not swear positively to those facts. It has been decided that a witness who falsely swears that he "thinks" or "believes," may be convicted of perjury

Rule excluding opinion does not exclude evidence as to belief.

(a) See Stephen, Dig. Ev., art. 49, and cases there cited as illustrations.

(b) 28 & 29 Vict., c. 18, s. 8.

equally with the man who swears positively to that which he knows to be untrue.

Opinion as to
conduct,
how far
admissible.

69. In cases affecting the conduct of the accused, either as to deportment or language, it is not only proper, but often necessary, to require a witness to declare his opinion, because that opinion may be derived from the impression of a combination of circumstances occurring at the time referred to, difficult, if not impossible, fully to impart to the court. But it would be manifestly improper to draw the attention of a witness to facts, whether derived from his own testimony or from that of another witness, and to ask his opinion as to their accordance with military discipline or usage, because the court, being in possession of facts, are the only proper judges of their tendency. If the witness is asked a question the tendency of which is to make him express his opinion as to the general conduct of the person accused, or give his judgment on the whole matter of the charge, he may, and should, decline to answer it.

Refreshing
memory.

70. A witness may not read his evidence or refer to notes of evidence already given by him, but he may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court consider it likely that the transaction was at that time fresh in his memory. The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if, when he read it, he knew it to be correct. Any writing so referred to must be produced and shown to the adverse party, if he requires it, and that party may, if he pleases, cross-examine the witness upon it.

Notes re-
ferred to not
evidence of
themselves.

71. But a witness who refreshes his memory by reference to a writing, must always swear positively as to the fact, or that he has a perfect recollection that the fact was truly stated in the memorandum or entry at the time it was written. If, on referring to a memorandum not made by himself, he can neither recollect the fact nor recall his conviction as to the truth of the account or writing when the facts were fresh in his memory, so that he cannot speak as to the fact further than as finding it noted in a written entry, his testimony is objectionable, as hearsay.

(v.) *Admissions and Confessions.*

Admissions
not evidence.

72. In criminal proceedings, admissions by a prisoner of matters relating to an alleged offence as distinguished from actual confession of the offence itself, are, strictly speaking, not receivable as evidence (a). It is, however,

(a) This does not extend to acts done or things said by the prisoner as part

the practice' of courts-martial to receive admissions made in open court as to collateral or comparatively unimportant facts, not involving criminal intent, which are not in dispute, but must be proved on the part either of the prosecution or of the defence. Thus, it is the practice to allow either party the option of admitting the authenticity of orders or letters, or the signature of a document, or the truth of a copy, put in by the other party, in cases where such writings are receivable when proved; or that certain details in an enumeration of stores, or in an account, are correctly stated: or that a promise or permission to a certain effect, or a certain order, was actually given, or that a certain letter was sent or received on a given day; and so in similar cases where admissions may expedite the proceedings and do not go to the merits of the matter before the court.

73. The general rule is, that a confession is not admissible as evidence against any person except the person who makes it (*a*). But a confession made by one accomplice in the presence of another is admissible against the latter to this extent, that, if it implicates him, his silence under the charge may be used against him, whilst on the other hand his prompt repudiation of the charge might tell in his favour.

Confession admissible only against person who makes it.

74. To be admissible as evidence, a confession must be voluntary. The prosecutor should always prove the circumstances under which it was made.

Confession must be voluntary.

75. A confession is not deemed to be voluntary, if it appears to the court to have been caused by any inducement, threat, or promise proceeding from a magistrate or other person in authority or concerned in the charge, and having reference to the charge against the accused person, whether addressed to him directly or brought to his knowledge indirectly, and if, in the opinion of the court, the inducement, threat, or promise gave the accused person reasonable grounds for supposing that by making a confession he would gain some advantage or avoid some evil in reference to the proceedings against him. Thus, on a trial of A for murdering B, a handbill issued by the Secretary of State, promising a reward and pardon to any accomplice who would confess, was brought to the know-

Confession when not deemed voluntary.

of the *res geste*, which, until explained by him, raise a presumption of guilt; as, for instance, if he has charged himself in a book of account which it was his duty to keep with a sum of money, the book may be an admission that he received the money, and on proof that he made the entry, is admissible in evidence against him. A letter by a person charged with an offence apologizing for the offence would ordinarily be a confession, but a letter admitting some of the facts alleged, but explaining them so as to show that there was no criminality in them, would ordinarily not amount to a confession.

(a) Stephen, Dig. Ev., art. 21. As to when the statement of one mutineer or conspirator is admissible against another, see above, para. 26, *et seq.*

ledge of A, who, under the influence of the hope of pardon, made a confession. It was held that the confession was not voluntary (a),

Confession
when
deemed
voluntary.

76. But a confession is not involuntary merely because it appears to have been caused by the exhortations of a person in authority to make it as a matter of religious duty, or by an inducement collateral to the proceedings, or by inducements held out by a person having nothing to do with the apprehension, prosecution, or examination of the prisoner. Thus, A being charged with the murder of B, the chaplain of the gaol read the Commination Service to A, and exhorted him on religious grounds to confess his sins. A in consequence made a confession, and it was held that this confession was voluntary (b). So, again, a confession made by a prisoner to a gaoler in consequence of a promise by the gaoler that if the prisoner confessed he should be allowed to see his wife, would be admissible in evidence. In short, to make a confession involuntary, the inducement must have reference to the prisoner's escape from the criminal charge against him, and must be made by some person having power to relieve him, wholly or partially, from the consequences of that charge.

Confession
made after
removal of
impression
produced by
threat, &c.,
deemed
voluntary.

77. A confession is deemed to be voluntary if, in the opinion of the court, it is shown to have been made after the complete removal of the impression produced by any inducement, threat, or promise which would otherwise render it involuntary. Thus, A is accused of the murder of B. C, a magistrate, tries to induce A to confess by promising to try to get him a pardon if he does so. The Secretary of State informs C that no pardon can be granted, and this is communicated to A. After this A makes a statement. This is a voluntary confession (c).

Facts
discovered
through
involuntary
confession
admissible.

78. Facts discovered in consequence of a confession improperly obtained, and so much of the confession as distinctly relates to those facts, may be proved. Thus, A, accused of burglary, makes a confession to a policeman under an inducement which prevents it from being voluntary. Part of it is that A had thrown a lantern into a certain pond; the fact that he said so, and that the lantern was found in the pond in consequence, may be proved (d).

Confession
made under
promise of
secrecy, &c.

79. If a confession is otherwise admissible as evidence, it does not become inadmissible merely because it was made under a promise of secrecy, or in consequence of a

(a) *R. v. Boswell*, Car. and Marsh, 584, cited as an illustration by Stephen, Dig. Ev., Art. 22.

(b) *R. v. Clewes*, 4 C. and P., 221, cited by Stephen, Dig. Ev.

(c) Stephen, Dig. Ev., art. 22, *R. v. Clewes*, 4 C. and P., 221.

(d) Stephen, Dig. Ev., art. 22, *R. v. Gould*, 9 C. and P., 364.

deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions, whether put by a magistrate, officer, or private person, or because he was not warned that he was not bound to make the confession, and that evidence of it might be given against him.

80. If a confession is given in evidence, the whole of it must be given, and not merely the parts disadvantageous to the accused person.

Whole of confession must be given.

81. Evidence amounting to a confession may be used as such against the person who gives it, though it was given on oath and though the proceeding in which it was given had reference to the same subject-matter as the proceeding in which it is to be used, and though the witness might have refused to answer the questions put to him; but if, after refusing to answer such questions, the witness is improperly compelled to answer, his answers are not a voluntary confession (a). Thus A was charged with maliciously wounding B. Before the magistrates, A had appeared as a witness for C, who was charged with the same offence. A's deposition was allowed to be used against him on his own trial (b). The same rule would appear to apply to statements made by a prisoner before his commanding officer; but the proceedings of a court of inquiry cannot be used as evidence against an officer or soldier before a court-martial (c).

Confession made on oath or in previous proceedings.

(vi.) Who may give Evidence.

82. Under the general law a person charged with an offence is not competent to give evidence on his own behalf, but exceptions have been made to this rule by recent legislation, especially in cases where the burden of proof is thrown on the person charged. In such cases he is declared to be a competent but not a compellable witness (d).

Person charged not competent witness.

83. As a general rule every person, other than the person charged, is a competent witness. Formerly persons were disqualified by crime or interest, or by being parties to the proceedings, but these disqualifications have now been removed by statute (e), and the circumstances which formerly created them do not affect the competency, though they may often affect the credibility, of a witness.

All other persons competent witnesses.

(a) Stephen, Dig. Ev., art. 23.

(b) *R. v. Chidley and Cummins*, 8 Cox, Crim. Ca., 365.

(c) Rule 123 (H).

(d) See, e.g., s. 156 (3) of the Army Act, and 39 & 40 Vict., c. 80, s. 4 (sending unseaworthy ship to sea), 46 Vict. c. 3, s. 4 (explosive substances), 48 and 49 Vict., c. 69, s. 20 (offences against girls, &c.).

(e.) Lord Denman's Act, 6 & 7 Vict., c. 85; Lord Brougham's Act, 14 & 15 Vict., c. 99.

Exceptions
to compe-
tency of
witnesses.

84. The chief exceptions to the general rule as to the competency of witnesses, are :—

First. That, subject to certain qualifications, husband and wife are not competent to give evidence for or against each other : and

Secondly. That persons jointly arraigned and being tried together, are not competent to give evidence for or against each other (*a*).

If, therefore, it is thought desirable to use against one prisoner the evidence of another who is being tried with him, the latter should be released, or a separate verdict of not guilty taken against him. A prisoner so giving evidence is popularly said to turn Queen's evidence. If a prisoner thinks that the evidence of one or more of the other prisoners proposed to be conjointly arraigned with him will be material to his defence, he should claim a separate trial (*b*).

Evidence of
accomplices.

85. It follows from what has been stated that the evidence of an accomplice is admissible against his principal, and *vice versa*, unless principal and accomplice are being tried together. But the evidence of an accomplice should always be received with great jealousy and caution. A conviction on the unsupported testimony of an accomplice may, in some cases, be strictly legal, but it is the practice to require it to be confirmed by unimpeachable testimony in some material part, and more especially as to his identification of the person or persons against whom his evidence may be received.

Reciprocal
incompe-
tency of
husband and
wife.

86. The incompetency of husband and wife to give evidence against each other does not apply where the trial is for violence inflicted by the husband on the wife, or *vice versa*, or where the husband or wife prosecutes the other for some offence relating to property (*c*). But in other cases it extends to prevent them from giving evidence which may tend to criminate each other collaterally, or from which one of them may derive a direct benefit at his or her trial. Thus, where two prisoners were being tried for burglary, and both were identified by a single witness for the prosecution, and each set up a distinct alibi, the wife of one was not allowed to give evidence in support of the alibi of the other, because her testimony went to shake the credit of the witness for the prosecution. The rule of exclusion extends only to a lawful wife. By s. 156 (3) of the Army Act an exception is made to the

(*a*) See 14 & 15 Vict., c. 99, s. 3; 16 & 17 Vict., c. 83, s. 2; Stephen Dig. Ev., art. 108; *R. v. Payne*, 1 C. C. R., 349.

(*b*) See Rule 15.

(*c*) Under Married Women's Property Act, 45 & 46 Vict., c. 75, ss. 12, 16.

rule in the case of offences against that section, and there are similar exceptions under other enactments (a). There is no ground for supposing that the wife of a prosecutor is an incompetent witness.

87. A witness is incompetent if, in the opinion of the court, he is prevented by extreme youth (b), disease affecting his mind, or any other cause of the same kind, from recollecting the matter on which he is to testify, from understanding the questions put to him, from giving rational answers to those questions, or from knowing that he ought to speak the truth. Incompetency from idiocy, &c.

88. A witness unable to speak or hear is not incompetent, but may give his evidence by writing or by signs, or in any other manner in which he can make it intelligible, but such writing must be written and such signs made in open court. Evidence so given is deemed to be oral evidence. Deaf and dumb persons not incompetent.

89. The particular form of the religious belief of a witness, or his want of religious belief, does not affect his competency. If he takes an oath he may take it with such ceremonies and in such manner as makes it binding on his conscience (c). If he objects to take an oath, or is objected to as incompetent to take an oath, he may make a solemn declaration (d). Religious belief immaterial as to competency.

90. A member of a court-martial is a competent witness in favour of a prisoner, and might, as such, be sworn to give evidence at any stage of the proceedings; but the Army Act and Rules of Procedure direct that a witness for the prosecution shall not sit on a court-martial for the trial of any prisoner against whom he is witness (e). A member of the court must not communicate privately to other members of the court any special knowledge which he has, or thinks that he has, of the prisoner's guilt or innocence, or act on private grounds of belief. If he wishes to give evidence, he must be sworn as other witnesses and be subject to cross-examination. Competency of member of court to give evidence.

91. It will be seen that the effect of the successive enactments which have gradually removed the disqualifications attaching to various classes of witnesses has been to draw a distinction between the competency of a witness and his credibility. No person is disqualified on moral or religious grounds, but his character may be such as to throw grave doubts on the value of his evidence. No re- Distinction between competency and credibility.

(a) See, e.g., 46 Vict. c. 3, s. 4, and 48 and 49 Vict., c. 69, s. 20.

(b) By the Criminal Law Amendment Act 1885 (48 & 49 Vict., c. 69, s. 4) special provision is made for the reception of the unsworn evidence of a child in the case of certain offences against girls.

(c) Rules 30, 80 (C); and see 1 and 2 Vict., c. 105.

(d) 32 & 33 Vict., c. 68, s. 4; Army Act, s. 52 (4), Rule 80 (D).

(e) Army Act, s. 50 (3), Rules 103 (D), 105 (D).

(A.M.L.)

lation except that of husband and wife, excludes from giving evidence. The parent may be examined on the trial of the child, the child on that of the parent, master for or against servant, and servant for or against master. The relation of the witness to the prosecutor or the prisoner in such cases may affect the credibility of the witness, but does not exclude his evidence.

(vii.) *Privilege of Witnesses.*

Person competent not always compellable to give evidence.

92. It by no means follows that, because a person is competent to give evidence, he is therefore compellable to do so. There are many cases in which a witness before a civil court may decline to answer a question or produce a document, and the like privileges are expressly extended by statute to witnesses before courts-martial (a).

Witness not to be compelled to criminate himself.

93. No one is bound to answer a question if the answer would, in the opinion of the court, have a tendency to expose the witness, or the wife or husband of the witness, to any criminal charge, penalty, or forfeiture, which the court regards as reasonably likely to be preferred or sued for, or to any military punishment. Accordingly, an accomplice cannot be examined without his consent, but if an accomplice who has come forward to give evidence on a promise of pardon, or favourable consideration, refuses to give full and fair information, he renders himself liable to be convicted on his own confession. However, even accomplices in such circumstances are not required to answer, on their cross-examination, as to other offences.

Privilege does not extend to answers showing civil liability.

94. The privilege as to criminating answers does not cover answers merely tending to establish a civil liability. No one is excused from answering a question or producing a document only because the answer or document may establish or tend to establish that he owes a debt, or is otherwise liable to any civil suit, either at the instance of the Crown or of any other person (b).

When privilege may be waived by witness.

95. The privilege of not answering for the above reasons is the privilege of the witness, and therefore he may waive it, and if he chooses to answer, his answer must be received in evidence, but the privilege mentioned in the following paragraphs is for the protection of other parties and cannot be waived except with their consent.

Evidence as to affairs of State.

96. Another class of privilege is based on considerations of public policy. No one can be compelled to give evidence relating to any affairs of State, or as to official communications between public officers upon public affairs,

(a) See Army Act, s. 128, and Rule 72 (B).

(b) 46 Geo. III, c. 37.

except with the permission of the officer at the head of the department concerned.

97. On this principle, a confidential report, or letter, or official information of a confidential character, although it may refer to matters which a court-martial may have decided to be relevant to the inquiry before it, cannot be produced or disclosed except by consent of the superior authority; and this consent is refused if the production or disclosure is considered detrimental to the public service. Proof of the refusal should be laid before the court by the examination of a witness, or by a written communication, read in open court, and attached to the proceedings.

Privilege as to confidential reports and information.

98. So also, the minutes of a court of inquiry cannot be called for by courts-martial, nor witnesses examined as to their contents, without the consent of the superior military authority by whose order the court of inquiry was assembled (a).

Privilege as to minutes of court of inquiry.

99. Again, in cases in which the Government is immediately concerned, no witness can be compelled to answer any question the answer to which would tend to discover the names of persons by or to whom information was given as to the commission of offences. It is, as a rule, for the court to decide whether the permission of any such question would or would not, under the circumstances of the particular case, be injurious to the administration of justice.

Information as to commission of offences.

100. A husband is not compellable to disclose any communication made to him by his wife during the marriage; and a wife is not compellable to disclose any communication made to her by her husband during the marriage (b).

Communications during marriage.

101. A legal adviser is not permitted, whether during or after the termination of his employment as such, unless with his client's express consent, to disclose any communication, oral or documentary, made to him as such legal adviser, by or on behalf of his client, during, in the course, and for the purpose of his employment, or to disclose any advice given by him to his client during, in the course, and for the purpose of such employment. But this protection does not extend to:—

Professional communications.

1. Any such communication if made in furtherance of any criminal purpose;
2. Any fact observed by a legal adviser in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment, whether his attention was directed to such fact by or on behalf of his client or not; or

(a) See also para. 81 above, and Rule 123 (H).

(b) 16 & 17 Vict., c. 83, s. 3.

3. Any fact with which the legal adviser became acquainted otherwise than in his character as such.

The expression "legal adviser" includes barristers and solicitors, their clerks, and interpreters between them and their clients, and the person assisting a prisoner during trial before a court-martial.

Doctors and clergymen not privileged.

102. Medical men and clergymen are not privileged from the disclosure of communications made to them in professional confidence, but it is not usual to press for the disclosures of communications made to clergymen.

Questions to be entered on proceedings whether answered or not.

103. The questions, whether answered or not, should be entered on the proceedings. When the witness claims the privilege of not answering, it is for the court to decide whether the question is within any of the exceptions. Courts-martial may also in their discretion interpose by informing a witness, at the time when a question is put to him, that he is not bound to answer. Any such interposition, and any claim of privilege by the witness, and the fact whether the witness is required to answer or not, should be noted on the proceedings.

(viii.) *How evidence is to be given.*

Mode of giving evidence dealt with by Rules.

Points requiring attention of court.

104. The mode in which evidence is to be given before courts-martial is fully dealt with in the Rules of Procedure, to which the following paragraphs must be taken as supplemental.

105. It will be the duty of the court in every case to see that the rules of evidence are strictly conformed to. The following points will require special attention in relation to any evidence that may be tendered :—

- (a) That it is relevant to the issue.
- (b) That it is the best evidence procurable.
- (c) That it is not within the rule rejecting hearsay evidence.
- (d) That (except in the case of experts) it is not a mere expression of opinion.
- (e) That if it is a confession or admission, it is legally admissible.
- (f) That if it is a document, it is legally admissible and properly put in evidence (a).
- (g) That no document or other thing is used for the purposes of the trial which has not been properly put in (b).

(a) A document is said to be "put in" when it is produced to the court and unless verification by a witness is unnecessary (para. 3b), properly verified.

(b) This must however be taken subject to the qualification that for

- (h) That any witnesses called are legally competent to give evidence.
- (i) That any document with which a witness proposes to refresh his memory is legally admissible for the purpose.
- (k) That the examination of witnesses is fairly and properly conducted.

106. This last point requires a little more detailed notice. Examination of witnesses.
The examination of a witness by the person who calls him is called his examination, or direct examination, or examination-in-chief; and on this examination the question must be relevant to the issue, that is to say, must relate to the matters in issue at the trial. The court must, of course, in all cases, see that a witness is not compelled to answer any question in respect of which he is entitled to claim privilege; and he must also see that, as far as possible, a witness is so dealt with that his honest belief is obtained from him.

107. Accordingly a witness must not be asked in examination-in-chief leading questions on any material point, Leading questions. that is to say, questions suggesting the answer which the person putting the question wishes or expects to receive, or suggesting disputed facts, as to which the witness is to testify. For instance, a witness must not be asked, "Did the prisoner then go into the barrack room?" but "What did the prisoner do next?" If it were not for this rule a favourable and dishonest witness might be made to give any evidence that is desired. On the other hand it would be mere waste of time to enforce the rule where the questions asked are simply introductory, and form no part of the real substance of the inquiry, or where they relate to matters which, though material, are not disputed. But where a question relates to a contested point, which is either directly conclusive of the matter in issue, or directly and proximately connected with it, the rule should nearly always be strictly enforced, and no question should be allowed in a form which directly or indirectly suggests to the witness the answer desired, or which, embodying a material fact, admits of a conclusive answer by a simple "Yes" or "No."

108. Care must, however, be taken in enforcing this rule, not to exclude questions which do not really suggest an answer, but merely direct the attention of the witness to the subject as to which he is questioned. It is often, indeed, extremely difficult in practice to determine whether or not a question is in a leading form, and in all such cases Test of what are leading questions.

purposes of identification, &c., any document or thing may be shown to a witness before it has been formally proved and put in. See below, para. 110.

Examples of
fair and
unfair
questions.

the real test should be whether or not the examination is being conducted fairly and with the object of eliciting the honest belief of the witness.

109. The following may be taken as examples of fair and unfair examination of a witness. Suppose a man to be charged with the murder of another by stabbing, the body having been found at the upper end of a certain street, and a witness to be called to speak to the circumstances under which the blow was struck. There would be no objection to ask the witness—

If he remembered the 12th August, and—

If he was in North Street about noon on that day.

These questions, though in a leading form, are merely introductory, and if the prisoner's defence was that he had struck the blow, but that he had done it in self defence, there would be no objection to going a little further and asking—

Whether he saw the deceased and the prisoner there?

But from this point all leading questions should be avoided, and the examination should be continued in some such form as this:

In what part of the street were the prisoner and deceased when you first saw them?

Were you in a position to see and hear what passed between them?

Tell us in your own words exactly what passed.

To ask, instead of the first question,

Were they at the upper end of the street when you first saw them?

would be highly improper, as it might be very important in considering whether or not there had been a long quarrel or scuffle, to know whether they had moved far from the place where the witness first saw them, to the place where the body was found. It would obviously be still more improper to go on to ask,

Did you see the prisoner go up stealthily behind the deceased and strike him a blow with a knife?

or any question of that character.

If, on the other hand, the defence set up were an *alibi*, it would be improper to ask directly after the introductory questions—

Whether the witness saw the deceased and the prisoner there?

The questions in that event should rather be:

Whether he saw anyone there?

Whether he could identify them?

Whether he can identify anyone in court as having been present?

though, finally, if an answer could not be got in any other way, the attention of the witness might be called to the prisoner, and he might be distinctly asked,

"Whether he saw that person there?"

But this should not be done until the witness had said that he saw some persons there, and that he would know them again.

110. The rule in these cases is, that the attention of a witness who has alluded to any person or thing, may be called to a particular person or thing for the purpose of identification, and that the witness may be asked directly whether that is the person or thing to which he alluded; but in practice this should only be done after examination in the ordinary way has failed to elicit any distinct replies. When any article, such as a stick, belt, or document, is produced in court for the purpose of identification, the witness may be asked such questions as "Whether he recognises it," and "Whether he saw anything done with it, or to it;" but such a question as "Whether he saw A strike B with the stick or belt," or "Whether he saw A make an alteration in the document," should not be admitted. If, however, the interests of justice plainly require it, the court may allow this general rule to be relaxed; as, for example, in the case of a child, whose attention cannot otherwise be directed to the matter under investigation. Again, where a witness is evidently labouring under a want of recollection, the court may in their discretion according to the circumstances, allow him to be assisted by the suggestion, for instance, of a name, or of the contents of a lost document.

Rule as to directing attention to particular persons and things.

111. Of course if a person calls a witness and the witness appears to be directly hostile to him, or interested on the other side, or unwilling to give evidence, the reason of the rule fails, and the court should allow the person calling the witness not only to ask him leading questions, but to cross-examine him, and to treat him in every respect as though he were a witness called by the other side, except that as he had been put forward, as worthy of credit, by the person calling him, that person must not be permitted, either by cross-examination or by direct evidence, to impeach his credit by general evidence of bad character (a).

Exceptions in case of hostile witness.

112. When the examination-in-chief is finished the opposite party cross-examines the witness. In cross-examination leading questions and irrelevant questions may be put, and must be answered, as the cross-examining party is entitled to test the examination-in-chief by every means in his power; and irrelevant questions are often put in cross-

Rules as to cross-examination.

examination for the sole purpose of putting a witness who is supposed to have learnt up the story, off his guard. Questions also may be put on cross-examination which tend either to test the accuracy or credibility of the witness or to shake his credit, impeaching his motives or injuring his character; though such questions cannot be put on the examination-in-chief or re-examination.

Further observations on cross-examination.

113. Nevertheless, questions should not be allowed which assume that facts have been proved which have not been proved, or that answers have been given contrary to the fact. Nor, though irrelevant questions may be asked, should a witness be pressed in cross-examination as to any facts, which, if admitted, would not affect the matter at issue or the credit of the witness. And if the person cross-examining intends to adduce evidence contradicting the evidence given by the witness, he should be required to put to the witness in cross-examination the substance of the evidence which he proposes to adduce, in order to give him an opportunity of retracting or explaining.

Further observations on cross-examination.

114. When a witness is under cross-examination he may be asked any questions which tend to test his accuracy, veracity or credibility, or (except in the case of a witness originally called by the person cross-examining him) to shake his credit by injuring his character. But a witness may of course decline to answer a question as to which he is entitled to claim privilege, and the right of asking questions tending merely to discredit, a right which has sometimes been seriously abused in civil courts, is qualified in the case of trials before courts-martial by Rule 90 of the Rules of Procedure.

Exclusion of evidence to contradict answers as to questions testing veracity.

115. Evidence cannot be given to contradict the answer of any witness to a question which only tends to shake his credit by injuring his character; except in two cases:—

- (i.) Where the witness is asked whether he has ever been convicted of any felony or misdemeanour and denies or refuses to answer (a); and,
- (ii.) Where he is asked a question tending to show that he is not impartial.

In these two cases proof may be given of the truth of the facts suggested; in other cases the person cross-examining cannot call evidence to rebut the witness's answer.

Cross-examination as to previous statements.

116. A witness may be asked whether he has, on a previous occasion, made a statement relative to the issue and inconsistent with his present testimony, the circumstances of the supposed statement being referred to sufficiently to designate the particular occasion, and if he does not admit that he made such a statement, proof may be given that

he did in fact make it. The summary of evidence may be used to prove any statement which the witness made, and which it is proposed to contradict. Such a question may be put, even though the statement may have been in writing (notwithstanding the rules as to documentary evidence), and even without the writing being shown to him or proved in the first instance; though it should be shown to him afterwards, and his attention called to those parts of the writing which are to be used to contradict him, as otherwise the contradictory proof cannot be given (*a*).

117. The credit of any witness may be impeached by the adverse party by the evidence of persons who swear that they, from their knowledge of the witness, believe him to be unworthy of credit on his oath. Such persons may not, on their examination-in-chief, give reasons for their belief, but they may be asked their reasons in cross-examination, and their answers cannot be contradicted. When the credit of a witness is so impeached, the party who called the witness may give evidence in reply to show that the witness is worthy of credit.

Impeaching
credit of
witnesses.

118. At the conclusion of the cross-examination the person who called the witness may, if he pleases, re-examine him; but the re-examination must be directed exclusively to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the court, introduced in re-examination, the other side may further cross-examine upon it.

Rule as to
re-examina-
tion.

119. Speaking generally, the above rules should only be enforced in their full strictness in the case of counsel or skilled advocates, or other persons who may be supposed to be thoroughly acquainted with the rules of evidence, and therefore may be presumed only to break the rules of evidence for the sake of obtaining an improper advantage. In other cases the court may allow considerable latitude, and should interfere only where the interests of justice plainly require it.

Discretion
of court as
to enforcing
rules.

(a) 28 & 29 Vict., c. 18, ss. 3, 4.

CHAPTER V.

CHAPTER XII. IN MANUAL OF MILITARY LAW.

RELATION OF SOLDIERS TO CIVIL LIFE.

How far in England a soldier is divested of civil rights and liabilities.

Illustrations. Inability to change domicile or settlement. Special provision as to maintenance of wife and family.

1. The English law on this subject differs from that of some foreign countries, and a man who becomes a soldier does not cease to be a citizen (*a*). If he commits an offence against the ordinary criminal law, he can be tried and punished as if he were a civilian, and serious liabilities are incurred by any officer who refuses to deliver him up to the civil magistrate on application (*b*).

2. On the other hand, his civil rights and duties are necessarily subject to some limitation for the purpose of enabling him to fulfil his engagement to serve the Crown (*c*). Thus he cannot, while in the service, change his domicile, or change the parish of his settlement (*d*). If he marries without the consent of the military authorities, the marriage is legal, but his wife will not be provided for by those authorities, and he is not punishable for deserting or neglecting to maintain his wife or family, or leaving them chargeable to the union. Special provision has, however, been made for proceeding against him to compel him to maintain his wife and family or bastard child, and for the deduction of a certain sum from his pay for the purpose of such maintenance (*e*).

(*a*) Clode, *Mil. Forces*, i. 144; ii. 143. As to the duty of soldiers to perform their part as citizens in repressing breaches of the peace, Chief Justice Sir James Mansfield thus spoke, in 1802: "Since much has been said about soldiers, I will correct a strange mistaken notion which has got abroad, that because men are soldiers they cease to be citizens; a soldier is gifted with all the rights of other citizens, and he is as much bound to prevent a breach of the peace or a felony, as any other citizen. . . . If it is necessary for the purpose of preventing mischief, or for the execution of the laws, it is not only the right of soldiers, but it is their duty to exert themselves in the assisting the execution of a legal process, or to prevent any crime or mischief being committed. It is, therefore, highly important that the mistake should be corrected, which supposes that an Englishman, by taking upon him the additional character of a soldier, puts off any of the rights or duties of an Englishman." *Burdett v. Abbott*, 4 Taunt., p. 401.

(*b*) Army Act, ss. 39, 41, 162. Under the Jurisdiction in Homicides Act, 1862 (25 & 26 Vict. c. 85), a person subject to military law who is charged with the murder or manslaughter of any other person subject to military law in England or Ireland, may be tried in London or Dublin more speedily than under the ordinary law.

(*c*) Clode, *Mil. Forces*, i. 206.

(*d*) Clode, *Mil. Forces*, ii. 37, 38, and the legal cases there cited.

(*e*) Army Act, s. 145.

3. Certain restrictions have also been imposed on the creditors of the soldier, so as to prevent the Crown losing his services. He cannot be arrested or compelled to appear before a court on account of any debt, damages, or sum of money under 30*l.*; but the exemption applies to the person not to the property of a soldier, and a creditor may sue and have execution, so long as he does not touch the person, pay, or military equipment of the soldier. To avoid injustice to the public from this exemption, the proclamation of "crying down credit" has been adopted, originally under an Article of War, and now under the Queen's Regulations, 1885 (*a*). An officer or soldier is unable, legally, to charge or assign his pay or pension (*b*).

Restrictions on creditors of soldier.

4. An officer or soldier on actual military service has power to make, as to his personal estate, a nuncupative will, that is to say, a will without writing, declared before a sufficient number of witnesses (*c*). Probate of the will and letters of administration of any common soldier, who is slain or dies in the service of Her Majesty, are exempt from stamp duty (*d*). Special provision has been made for collecting and realising the effects of a deceased officer or soldier, and paying certain military debts thereout (*e*).

Wills of officers and soldiers.

5. Officers are entitled to an exemption from licence duty for any servant who is a soldier in the army, and is employed by the officer in accordance with the regulations of the service (*f*).

Exemption of soldier servants from licence duty.

6. Every non-commissioned officer and soldier whilst on service, is entitled by statute, independently of any post-office regulations for the time being in force, to send or receive letters not exceeding half an ounce by post for one penny pre-paid, but any foreign postage in addition must be paid. Where a letter is re-directed, both an officer as well as a non-commissioned officer or soldier is entitled to receive the letter free from any postage, foreign or other, charged for the re-direction (*g*).

Privileges of soldiers in relation to letters.

7. Officers and soldiers have not any personal exemption from any local rates or tolls, but where an officer occupies property in respect of his office the occupation is treated as occupation by the Crown, and he is not liable to

Exemptions from local rates and tolls.

(*a*) Army Act, s. 144; Q. R., 1885, Sect. VII. para. 166.

(*b*) Army Act, s. 141.

(*c*) This privilege was reserved to soldiers and sailors by 29 Cha. II, c. 3; and now by 7 Will. IV. and 1 Vict. c. 26, s. 11. As to when a soldier is on actual military service, see Williams on Executors, 8th edn. p. 118.

(*d*) 55 Geo. III, c. 184, sched. part 3.

(*e*) Regimental Debts Act, 1863, 26 & 27 Vict. c. 57. Regulation of Forces Act, 1881, s. 51.

(*f*) 32 & 33 Vict. c. 14. The exemption from the licence duty for keeping a horse, which is given by the same Act, is rendered unnecessary by the repeal of the licence duty by 37 & 38 Vict. c. 16.

(*g*) 3 & 4 Vict. c. 96, s. 53; 10 & 11 Vict. c. 85, s. 7; 23 & 24 Vict. c. 65; 36 & 39 Vict. c. 22, s. 7; Q. R., 1885, Sect. VII. para. 260*a*, which is based on a letter from the Treasury to the War Office of 15th July, 1885.

be rated in respect of that property, inasmuch as the Crown is exempt from local rates. If, therefore, the occupation is for his own personal benefit, and not for the benefit of the Crown, an officer will be liable to be rated like any other individual. Similarly, officers and soldiers, when on duty, are exempt from tolls (a), but are not so exempt when travelling for their own purposes only.

Exemption
from service
on juries,
&c.

8. Officers of the army, militia, or yeomanry, while on full pay are exempt in England from serving on juries (b). This exemption is an absolute exemption from serving on a coroner's jury, but as regards a grand jury or common jury is qualified, as it is only an exemption from being placed on the jury list, and if an officer is on the list he is bound to serve notwithstanding his exemption. Care must therefore be taken to claim the exemption at the time when the lists of jurors are made out in August and September. A soldier is entitled to a similar exemption from serving on juries anywhere (c). Officers on full pay or half-pay are also exempt from being compelled to serve any municipal office in England (d). Officers are also exempt from serving the office of overseer (e). The above provisions may have been made for the purpose of enabling an officer to fulfil his military duties, but the provision of the Army Act (f) which disqualifies an officer on full pay for holding the office of sheriff, mayor, alderman, or any municipal office in any place in the United Kingdom, was doubtless originally enacted from jealousy of the military forces acquiring any undue influence by holding influential offices.

Right to
vote at
Parliamentary
election,
and to sit in
House of
Commons.

9. An officer or soldier has the same right as a civilian to vote at an election for members of Parliament, and if himself elected, is entitled without leave or order to attend the House of Commons (g). The acceptance by a member of the House of Commons of a first commission in the army vacates his seat, but the acceptance of a new commission by a member already a commissioned officer does not vacate his seat; and it may be that an officer in the army will not vacate his seat by the acceptance of an office

(a) Army Act, s. 143. The Local Acts regulating turnpike roads, &c., usually contain like exemptions.

(b) 33 & 34 Vict. c. 77, s. 9, and schedule.

(c) Army Act, s. 147.

(d) 45 & 46 Vict. c. 50, s. 253.

(e) Owen's Manual for Overseers, p. 5.

(f) Army Act, s. 146.

(g) Clode, Mil. Forces, i, 192, 195. The statement that an officer or soldier is entitled without leave to go to a place of election and record his vote appears to have been based upon 10 & 11 Vict. c. 21, which repealed the former Act (8 Geo. 2, c. 30). Those Acts never applied to persons out of the United Kingdom, and as regards persons in the United Kingdom, appear to have been merely intended to save from the enactments prohibiting soldiers being present at a place of election, those of them who were entitled to attend and vote.

which, if filled by a civilian, would vacate the seat (a). An officer or soldier, if in the United Kingdom, ought to be allowed, if he wishes, to go to the place of election and record his vote, unless military exigencies render it impossible (b). But soldiers not being electors are excluded, in Great Britain, though not in Ireland, from being present at places of election (c).

10. In conclusion may be noticed the Act which enables military savings banks to be established for the purpose of military deposits from non-commissioned officers and soldiers, under regulations made by the Secretary of State for War, with the concurrence of the officer Commanding-in-Chief and of the Treasury (d).

Military
Savings
Banks.

(a) 6 Anne, c. 41, s. 27 (c. 7, s. 28 in ordinary editions). Clode, *Mil. Forces*, i, pp. 192, 193.

(b) As to right to vote in respect of occupation of quarters, see *Atkinson v. Collard*, L.R. 16, Q.B.D. 254.

(c) 10 & 11 Vict. c. 21; 26 & 27 Vict. c. 12. For the history of the old practice of keeping soldiers out of assize towns during the holding of assizes, see Clode, *Mil. Forces*, ii, pp. 203-205.

(d) 22 & 23 Vict. c. 20.

CHAPTER VI.

CHAPTER XIII. IN MANUAL OF MILITARY LAW.

SUMMARY OF THE LAW OF RIOT AND INSURRECTION.

Object of chapter.

1. The object of this chapter is to give such an explanation of the law relating to unlawful assemblies, riots, and insurrections as may be useful to officers when called upon by the civil authorities to assist them in suppressing disturbances (a).

Definition of unlawful assembly.

2. The first question is, What is an unlawful assembly? for the mere gathering together of people is no crime in the eye of the law. "There is no doubt that the people of this country have a perfect right to meet for the purpose of stating what are or even what they consider to be their grievances; that right they always have had, and I trust always will have; but in order to transmit that right unimpaired to posterity, it is necessary that it should be regulated by law and restrained by reason" (b).

An unlawful assembly, then, is any meeting whatsoever of great numbers of people with such circumstances of terror as cannot but endanger the public peace and raise fears and jealousies among the Queen's subjects, as where great numbers complaining of a common grievance meet together, armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests; for no one can foresee what may be the event of such an assembly (c). The commission of an act of violence by any one or more of those assembled, is not necessary to make the assembly unlawful, if its character and circumstances are such as to be calculated to alarm, not only foolish or timid people, but persons of reasonable firmness and courage (d).

Example of unlawful assembly.

3. Accordingly, in the case of a Chartist meeting at

(a) Riot is a common law offence; the term insurrection is used in this chapter as a description of the offence that is technically called "levying war against the Queen."

(b) Charge of Baron Alderson to the Grand Jury in *R. v. Vincent*, 9 Car. & Payne, 65.

(c) Hawkins, Bk. 1. ch. lxx. sec. 9. See also *R. v. Vincent*, 9 Car. & Payne, 95; *R. v. Neale*, 9 Car. & Payne, 431.

(d) See the summing up of Baron Alderson in *R. v. Vincent*, 9 Car. & Payne at p. 109.

Newport in 1839, an assembly was held to be unlawful in which from 300 to 1,000 persons were gathered together, and in respect to which evidence was given that the speakers endeavoured to incite the people to disaffection and to the use of physical force. No actual outrage was perpetrated, but numbers of persons armed with sticks were proved to have marched in procession, and several witnesses swore that they apprehended danger both to life and property (a).

4. A riot is a tumultuous disturbance of the peace by three or more persons assembling together of their own authority with an intent mutually to assist one another against any who oppose them, in the execution of some enterprise of a *private nature*, and afterwards actually executing the same in a violent and turbulent manner to the terror of the people. It is immaterial whether the act done be unlawful or not, but there must be an act (b). Doing the act in a manner calculated to inspire people with terror is punishable, whether it be lawful or unlawful; but where the object of the assembly is lawful, it requires far stronger evidence of the terror caused by the means used, to induce a jury to return a verdict of guilty, than if the object were unlawful.

5. For example, persons assembling together on a race-course and tumultuously pulling down a booth, or gathering together in a tumultuous manner and breaking threshing machines, are guilty of a riot. Again, a number of persons assembling for a lawful object, such as pulling down an inclosure which has been illegally put up, will be guilty of a riot, if their assembling is accompanied with circumstances of actual force or violence calculated to inspire people with terror. On the other hand, if an assembly of persons be not accompanied with such circumstances as these, it can never be deemed a riot.

6. An insurrection differs from a riot in this—that a riot has in view some enterprise of a *private nature*, while an insurrection savours of high treason, and contemplates some enterprise of a *general and public nature* (c). An insurrection, in short, involves an intention to levy war against the Queen, as it is technically called; or otherwise to act in general defiance of the government of the country.

7. For example, a mob assembling to pull down or burn

(a) *R. v. Vincent*, 9 Car. & Payne, 91; and see *R. v. Neale*, *ib.* 431, in which the law is similarly laid down by Mr. Justice Littledale.

(b) Hawkins, Bk. 1, ch. lxx. sec. 9.

(c) Charge of Baron Alderson to the Grand Jury in *R. v. Vincent*, 9 Car. & Payne, p. 94. See Lord Mansfield's charge on the trial of Lord George Gordon in 1781, 21 State Trials, 644. Lord George Gordon was indicted for high treason, but acquitted on the ground that his acts, in the opinion of the jury did not amount to constructive levying of war against the Crown.

a cotton mill, because the proprietor is obnoxious to them, are engaged in a riot. If the object were to attack a barrack or seize a store of arms with a view to arm themselves and make war against the government, they would be in a state of insurrection.

Case of *R. v. Frost*.

8. In the case of *R. v. Frost* (a), the insurgents, numbering about 5,000, were armed, many with guns or pikes, some with swords, others with mandrils (a kind of pickaxe for cutting coal), and others with scythes fixed on sticks, or with bludgeons. They marched to Newport in a sort of military order, and dangerously wounded a person sent out to reconnoitre. On arriving at Newport, they attempted to force their way into the Westgate Inn, where troops had been stationed by the mayor, and called upon the soldiers to surrender. On the reply being given, "No, never," they fired on the soldiers, who after a time returned the fire, when the insurgents dispersed.

In this case it was contended on behalf of the prisoners that the object of the insurgents was to procure the liberation of certain prisoners who were in custody at the Westgate Inn, and to obtain better treatment for a prisoner named Vincent. To this it was replied that the intention of the prisoners was to take possession of the town of Newport by surprise, terror, or force, and to use that possession as the means of raising a rebellion.

It was admitted that if the first of the above objects was the real one, the prisoners were not guilty of high treason, but evidence was given that the second was their real purpose, and that they had been planning an insurrection for some time. Accordingly, they were found guilty of high treason; in other words, the enterprise was considered to be an insurrection, and not a riot.

Distinction between unlawful assembly, riot, and insurrection.

9. It will be seen from the foregoing definitions and examples that an unlawful assembly and a riot are different stages as it were of the crime of insurrection. An unlawful assembly is an assembly which may reasonably be apprehended to endanger the public peace. As soon as an act of violence is perpetrated it becomes a riot; while if the act of violence be one of a public nature, and with the intention of carrying into effect any general political purpose, it becomes an insurrection or rebellion, and not a riot (b).

(a) 9 Car. & Payne, 129. This case also arose out of the Chartist movement in 1839, and should be compared with *R. v. Vincent*, *ante*.

(b) Baron Alderson in his charge to the Grand Jury, delivered at the Monmouth Assizes in 1839 (9 Car. & Payne, 94 n.), cited the following observations of Mr. Justice Bayley:—"If the persons who assemble together say, 'We will have what we want, whether it be according to law or not,' a meeting for such a purpose, however it may be masked, if it be really for a purpose of that kind, is illegal. If a meeting, from its general appearance, and from all the accompanying circumstances, is calculated to excite

10. As might be expected from the different character of the meetings, the offence of taking part in an unlawful assembly, a riot, or an insurrection involves very different degrees of guilt and very different punishments. A man convicted of being at an unlawful assembly, or of taking part in a riot, is guilty of a misdemeanour, and is punishable at common law by fine or imprisonment, or both; but by statute there is this wide difference made between the two offences, that in the case of riot hard labour may be inflicted, whilst in the case of an unlawful assembly the imprisonment is without hard labour (a). A participator in an insurrection may be held guilty of treason and be capitally punished.

Distinction in punishment.

11. The offence of taking part in a riot, or an insurrection, is independent of any additional crime which the persons assembled may either themselves commit, or of which they may be held to be guilty as principals, by reason of their forming part of the mob which commits such crime. For example, a riot seldom takes place without the rioters breaking into houses or otherwise destroying property. An insurrection almost always involves murder or attempts to murder. All persons present at the commission of such crimes are equally principals in the breaking into houses, destroying the property, murder, or attempt to murder, although at the time some of them take no actual part in the transaction at all; but practically the extreme measure of punishment is usually awarded only to the leaders (b).

Additional crimes usually incident to riots and insurrections.

12. The law would fall far short of what is needed for the preservation of society if it did not allow all necessary measures to be taken for dispersing or otherwise putting an end to unlawful assemblies, riots, and insurrection. The law accordingly declares that an unlawful assembly may be dispersed, although it has committed no act of violence; for it is better that individuals should be stopped before they proceed to outrage and violence; and a small amount

Suppression of unlawful assemblies, riots, and insurrections.

"terror, alarm, and consternation, it is generally criminal and unlawful." Baron Alderson continued, "These are, as I take it, the clear principles of law, an unlawfully assembly differing in this respect from a riot, that a riot must go forward to the perpetration of some act which the unlawful assembly is calculated to originate and inspire. Something must be executed in a turbulent manner to constitute a riot, but in these cases it must be some enterprise of a private nature, because if the enterprise be of a general and public nature, it savours of high treason, and there is no doubt that if you find these persons assembled together by delegates dispersed from any central jurisdiction in this kingdom, and those persons so meeting together in consequence of a delegation from a central body commit any act of violence for the purpose of carrying into effect any general political purpose, they run the risk of being charged with high treason."

(a) 1 Hawk., c. 64, s. 12. By 3 Geo. IV, c. 114, hard labour may be given. As will be seen hereafter, rioters remaining for an hour after the Riot Act has been read, become felons.

(b) See *R. v. Howell*, 9 Car. & Payne, 437.

(A.M.L.)

H

Degree of
force to be
used in sup-
pression of
unlawful
assemblies.

of punishment in the first instance will probably save a great amount of crime afterwards (a).

13. So far as the law is clear ; but a grave practical difficulty arises as to the degree of force to be used in effecting the dispersion. If the assembly is verging on a riot, and the demeanour of those present shows that they are bent on serious mischief, it may be the bounden duty of the magistrates to take immediate steps to disperse the assembly, even using force if necessary. If, on the other hand, the assembly is unlawful but in a slight degree, and there is no immediate apprehension of violence, it can scarcely be justifiable to attempt to disperse it by force, or wise, as a rule, to display force. No positive rule can be laid down, but different cases must depend on their own circumstances. If resort be had to force, the principle is that so much force only is to be used as is sufficient to effect the object in view, namely, the dispersion of the assembly ; and if injury results to any person from the use of that force, the question to be tried is whether the means used were or were not more violent than the occasion required (b).

Suppression
of riots.

14. In dealing with riot, the law speaks more decidedly. Every magistrate, sheriff, constable, and other peace officer is required to do all that in him lies for the suppression of a riot, and each has authority to command all other subjects of the Queen to assist him in that undertaking. Every man is bound, when so called upon, to yield a ready and implicit obedience, and do his utmost to assist in suppressing any tumultuous assembly (c).

Extract from
charge of
Chief Justice
Tindal.

15. "If the riot be general and dangerous, every subject may arm himself against the evil-doers to keep the peace. Such was the opinion of all the judges of England in the time of Queen Elizabeth in a case called 'The case of Arms' (Popham's Rep., 121); although the judges add that it would be more discreet for every one in such a case to attend and be assistant to the justices, sheriffs, or other ministers of the King in doing this. It would undoubtedly be more advisable so to do ; for the presence and authority of the magistrate would restrain the proceeding to such extremities until the danger was sufficiently immediate, or until some felony was either committed or could not be prevented without recourse to arms ; and, at all events, the assistance given by men who act in subordination and concert with the civil magistrate, will be more effectual to attain the object proposed than any efforts, however well intended, of

(a) By Baron Alderson in *R. v. Vincent*, 9 Car. & Payne, 94.

(b) *R. v. Neale*, 9 Car. & Payne, 435.

(c) Charge of Chief Justice Tindal to the Grand Jury in 1832, quoted in *R. v. Pinney*, 5 Car. & Payne, 262, note.

"separated and disunited individuals. But if the occasion demands immediate action, and no opportunity is given for procuring the advice or sanction of the magistrate, it is the duty of every subject to act for himself and upon his own responsibility in suppressing a riotous and tumultuous assembly; and he may be assured that whatever is honestly done by him in the execution of that object will be supported and justified by the common law" (a).

16. With regard to the circumstances which may justify the use of deadly weapons by those engaged in endeavouring to disperse a riot, Chief Justice Tindal, in the charge already quoted, made the following observations (b):— "There is one case which stands in a different situation from the rest, and to which it may be proper that I should call your particular attention—I mean the case of James Cossley Lewis, who is at present at large upon his recognizance, but who stands charged, upon an inquest before the coroner, with the offence of manslaughter, in shooting a boy of the name of Morris. It appears from the depositions before the coroner, that Lewis was acting in aid of the civil authorities in assisting to clear the streets, after proclamation had been regularly made, requiring the rioters to disperse themselves, and after they had continued together for more than an hour from the time of making proclamation. It appears, also, by the testimony of the witnesses, that the pistol was not aimed at the boy who was unfortunately struck by the ball. The nature, however, of the offence committed by Lewis will not depend so much upon that fact as upon the circumstances under which the pistol was originally discharged. If the firing of the pistol by Lewis was a rash act, uncalled for by the occasion, or if it was discharged negligently and carelessly, the offence would amount to manslaughter; but if it was discharged in the fair and honest execution of his duty, in endeavouring to disperse the mob, by reason of their resisting, the act of firing the pistol was then an act justified by the occasion, under the Riot Act before referred to, and the killing of the boy would then amount to accidental death only, and not to the offence of manslaughter."

Use of deadly weapons by those engaged in dispersing riots.

17. There is no doubt that a person lawfully engaged in trying to apprehend a rioter is justified in using any

In apprehension of rioters.

(a) Charge of Chief Justice Tindal, quoted in *R. v. Pinney*, 5 Car. & Payne, 262, note. From early times the duty of sheriffs and magistrates to suppress riots and apprehend rioters, and the obligation of the people of the county to assist them have been laid down and enforced by statutes. Some of these, as for example the 15 Rich. II, c. 2 (1391), the 13 Hen. IV, c. 7 (1411), the 2 Hen. V, st. 1, c. 8 (1414), are still unrepealed, and to some extent, at all events, in force.

(b) *R. v. Pinney*, 5 Car. & Payne, 267, note.

degree of force to protect himself, or to overcome resistance. It is, however, sometimes impracticable to attempt the apprehension of individuals, without using means calculated to occasion bloodshed, and the firing on a mob (which is what using deadly weapons practically means) can only be excused by the necessity of self-protection, or by the circumstance of the force at the disposal of the authorities being so small that the commission of some felonious outrage—such as the burning of a mill, or the breaking open of a prison, or the attacking of a barrack—cannot be otherwise prevented (a).

In suppression
of insurrections.

18. The observations made above with respect to the duty of suppressing riots apply still more strongly to insurrections, of "riots which savour of rebellion." In such cases the use of arms may be resorted to as soon as the intention of the insurgents to carry their purpose by force is shown by open acts of violence, and it becomes apparent that immediate action is necessary.

Account of
Riot Act.

19. The expediency of arming the civil power with authority to put an end to serious risings, before the commission of actual outrage, was doubtless the motive which led to the passing of the Riot Act (1 Geo. I, stat. 2, c. 5) in 1714 (b).

Effect of
proclamation
under Act.

20. The first section declares: "That if twelve or more persons, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, and being required or commanded by any justice, by proclamation to be made in the King's name, to disperse themselves, and peaceably to depart, shall unlawfully, riotously, and tumultuously remain or continue together for one hour after the proclamation, they shall be adjudged felons." Suppose, therefore, a riot to have commenced, and the authorities present to be of opinion that serious consequences may be apprehended if the rioters are not dispersed within a limited time, it would be their duty to make the proclamation required by this Act; and if twelve or more persons remain together after the expiration of an hour they may be treated as felons, and will be subject to the punishment of penal servitude for life, or not

(a) In the Six Mile Bridge case or riots at the County Clare election in 1852, an escort of two officers, two sergeants, and forty rank and file, employed to protect voters going to poll, were attacked and stoned by the mob. The soldiers fired without orders from their officers, but, as was subsequently sworn by the commanding officer, *in defence of their own lives*, and killed two or three of the mob. Indictments were preferred against those who fired, or were supposed to have fired, but the bills were thrown out by the Grand Jury. The charge of Mr. Justice Perrin to the Grand Jury in this case appears virtually to ignore the riotous character and unlawful object of the mob, and the fact of the unprovoked attack on the soldiers.

(b) Similar Acts had previously been passed. 3 & 4 Edw. VI, c. 5; 1 Mar. st. 2, c. 12.

less than seven years, or to imprisonment with or without hard labour, not exceeding three years.

21. The form of the proclamation and the mode of making it are provided for in the next section, which directs the justice, among the rioters, or as near them as he can safely come, to command silence, and then with a loud voice to make proclamation in the following words:—

Form of proclamation.

“Our Sovereign Lady the Queen chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the Act made in the first year of King George the First, for preventing tumults and riotous assemblies.

“God save the Queen” (a).

22. Further, section 3 provides that persons remaining for one hour after the proclamation may be seized and apprehended by any justice or person assisting him; and that if any of the persons so unlawfully assembled happen to be killed, maimed, or hurt in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting, then the justices, constables, and persons assisting such justices and constables shall be fully indemnified for any such killing, maiming, or hurting (b). Persons hindering the reading of the proclamation, and if the proclamation be hindered, persons not dispersing within an hour after the hindrance, suffer the same punishment as persons who remain together for an hour after the reading of the proclamation.

Effect of remaining for an hour after proclamation.

23. In the riots excited by Lord George Gordon in 1780, the mob were allowed to proceed to great excesses without any interference by the civil or military authorities; and this appears to have been allowed under the impression that until the proclamation in the Riot Act was read, the dispersion of the rioters would be illegal. To correct this impression Lord Loughborough made use of the following language:—

A riot may be dispersed before the proclamation in the Riot Act is read.

“It has been imagined because the law allows an hour for the dispersion of a mob to whom the Riot Act has been read (c) by the magistrate, the better to support the

(a) In *R. v. Child*, 4 Car. & Payne, 442, it was decided that if in reading the proclamation from the Riot Act the magistrates omit to read the words “God save the Queen” at the end of it, persons remaining together for an hour after such reading of the proclamation cannot be convicted under s. 1 of the Act.

(b) As to punishments, see 7 Will. IV & 1 Vict. c. 91, s. 1; 9 & 10 Vict. c. 24, s. 1; 20 & 21 Vict. c. 3, s. 2.

(c) This expression, though very common, is not strictly accurate. Not the Act but only the proclamation is required to be read or recited.

(A.M.L.)

"civil authority, that during that period of time the civil power and the magistracy are disarmed, and the King's subjects, whose duty it is at all times to suppress riots, are to remain quiet and passive. No such meaning was within view of the legislature, nor does the operation of the Act warrant any such effect. The civil magistrates are left in possession of those powers which the law had given them before. If the mob collectively, or a part of it, or any individual, within or before the expiration of that hour attempts or begins to perpetrate an outrage amounting to felony, to pull down a house, or by any other act to violate the law, it is the duty of all present, of whatever description they may be, to endeavour to stop the mischief and to apprehend the offender" (a).

Further observations.

24. This passage shows that the Riot Act does not destroy any power which lawfully existed before its passing for the suppression of riot. But it also admits the inference that, as a general rule, it would be extremely imprudent to use an armed force against a mob until the proclamation required by the Act has been made and the appointed space of an hour elapsed, except in circumstances where either the proclamation cannot be read owing to the violence of the mob, or the mob before the expiration of an hour after it has been read, perpetrate or are evidently about to perpetrate some outrage amounting to felony. In every such case, when it arises, the question has to be decided,—At what point does the felonious purpose become so manifest as to justify action?

Circumstances which may guide authorities in use of force.

25. Undoubtedly the question is difficult, but many circumstances suggest themselves, which may serve as a guide to justices and officers called on to act in cases of sudden tumult. The first question they will ask themselves is for what purpose has the mob come together? as a knowledge of the purpose of the mob usually furnishes the most certain clue to a determination of the time and mode in which forcible interference should take place. For example, a mob assembles for the purpose of pulling down an obstacle to a footpath, which has been obstructed either illegally or with doubtful legality. Their proceedings may be disorderly, but their purpose may be legal, and certainly is not felonious. The probability is that as soon as they have effected their object they will disperse. In such a case, the best course is to use no force, but merely to take means to identify some of the parties concerned, with a view to subsequent proceedings, if necessary.

Further illustrations.

26. On the other hand, suppose a mob determined to destroy the cotton mill of an obnoxious proprietor. They arm themselves with weapons to break open the doors, and

they show a settled intention to carry their object into effect. In such a case their intent is felonious, but they should be warned of the danger they will incur in attempting such an outrage, and the proclamation in the Riot Act should, if time allow, be read ; and whether it has been read or not, and whether the hour after the reading has or has not expired, the apprehension of the ringleaders, or any other repressive measures which may be necessary to prevent the actual commission of an outrage, should be effected, if possible. Soldiers may be summoned in case the civil authority is in danger of being overpowered, but they should not be called into action till the necessity arises for protecting life and property by military force.

27. Take another instance. A meeting assembles in procession with a view to political objects, say the furtherance of Parliamentary reform, the abolition of an obnoxious tax, or any other political object not involving rebellion against the established authority, or a clear intention to enforce by violence the object, though legal, which they have in view. It is, of course, quite possible that excitement may prompt them to outrage, but such a meeting, so long as it commits no act of violence, should be interfered with as little as may be, and no exhibition of force should take place till some violent crime has been or is about to be committed.

Further illustrations.

28. On the other hand, an assemblage which declares openly that it proposes to attack the constituted authorities, and which consists wholly or partially of armed men ; or an attempt like that of the Fenians at Chester in 1867 to seize a castle for the purpose of obtaining arms cannot be too quickly dealt with, and force should be repelled by force, care being taken to avoid any unnecessary bloodshed or injury.

In case of insurrection.

29. The conclusions deducible from the foregoing pages appear to be as follows :—

Summary of law as to unlawful assemblies, riots, and insurrections.

1. Persons attending an unlawful assembly are guilty of a misdemeanour, and the magistrates may, and under certain circumstances ought, to disperse an unlawful assembly.

2. Rioters, before the proclamation contained in the Riot Act has been read and an hour has expired, are guilty of a grave misdemeanour, and may be dispersed by the magistrates. After the proclamation has been read and an hour has expired, all persons riotously continuing together, to the number of twelve or more, become felons, and the Act contains a clause indemnifying the officers and their assistants in case of any of the mob being killed or injured in the endeavour of the officers and their assistants to seize, apprehend, or disperse them.

3. Insurgents, or persons engaged in an insurrection

are guilty of treason, the gravest sort of felony, and it is the duty of the magistrates to take every lawful means to put down an insurrection.

Summary of law as to force to be used.

30. The law which commands the suppression of unlawful assemblies, riots, and insurrections necessarily justifies the civil power in using the necessary degree of force for their suppression. The difficulty is to ascertain what is this necessary degree of force, and the danger of making a mistake in the matter is serious, as any excess in the use of force constitutes a crime.

In case of unlawful assembly.

31. Beginning with an unlawful assembly, it would appear that the police have power to command those present to go away, and to arrest them if they do not go, also to stop others whom they see joining them (*a*). If the parties interfered with resist, such force may be used as will compel obedience; but it would be extremely inadvisable to use any such force as would maim or injure the person resisting, unless he himself made an attack inflicting, or at all events calculated to inflict, grievous personal injury on his captor.

In case of riot.

32. Proceeding to the case of a riot, before the proclamation required by the Riot Act is read, the same observations apply as in the case of an unlawful assembly. After the proclamation has been read and an hour has elapsed, considerable force may if necessary be used for the purpose of dispersing the mob. If the mob are committing, or evidently about to commit, some outrage calculated to endanger life or property, then, even before the expiration of the hour after the reading of the proclamation, or even without reading the proclamation at all, force may equally be used. But even then deadly weapons ought not to be employed against the rioters, unless they are armed, or are in a position to inflict grievous injury on the persons endeavouring to disperse them, or are committing, or on the point of committing, some felonious outrage, which can only be stopped by armed force.

In case of insurrection.

33. The existence of an armed insurrection would justify the use of any degree of force necessary effectually to meet and cope with the insurrection.

Application of preceding observations to troops aiding civil power.

34. Applying the foregoing rules respecting the use of force to soldiers, the following observations occur. Soldiers, when acting in aid of the civil power, in no respect differ, in the view of the law, from armed citizens. Their organisation prevents their being conveniently employed in using moderate force for the purpose of dispersing or apprehending rioters without doing them any injury; and as a general rule any action on their part involves the risk of inflicting death, or, at all events, grievous bodily

(*a*) Hawkins, Bk. 1, ch. lxx. sec. 11.

harm. Soldiers, therefore, should never be required to act except in cases where the riot cannot reasonably be expected to be quelled without resorting to such means of repression. These cases are practically confined to riots in which violent crimes, such as murder, house-breaking, or arson, are being committed, or are likely to be committed, and to insurrections in which an intention is clearly shown to attempt by force of arms the overthrow of the government, or the execution of some general political purpose.

35. There remains to be considered the question on whom the responsibility of acting rests in the case of the military being employed in the suppression of disturbances. The primary duty of preserving public order rests with the civil power. An officer, therefore, in all cases where it is practicable, should place himself under the orders of a magistrate. On the other hand, an officer will not perform his duty who from fear of responsibility lies by and allows outrages to be committed which it is in his power to check, merely on the ground that there is no magistrate on the spot to give orders to the military. If the officer and magistrate are acting together, the obligation lies on the magistrate to give orders, and an officer would incur considerable responsibility by firing without his orders, or refusing to fire in pursuance of his orders. Still, the law of England is that a man obeys an illegal order at his own risk, and circumstances might arise which would justify the officer in firing or not firing, notwithstanding the magistrate might give orders to the contrary. The magistrate, also, if he acts with discretion, will necessarily defer in military matters to the opinion of an officer, and if he were to give orders to fire upon rioters, although dissuaded by the officer accompanying him, he would, as was said in the case of *R. v. Pinney*, have great difficulty in defending himself in the event of death occurring, should he be indicted for manslaughter (a).

Division of responsibility between magistrates and military officer.

36. Complaint was made by Sir Charles Napier in his Remarks on Military Law of the hardship of imposing on an officer the obligation of deciding whether he is or is not justified in ordering his men to act. He contended that an officer ought not to be liable to trial by the ordinary

Opinion of Sir Charles Napier.

(a) See *R. v. Pinney*, 5 Car. & Payne, 273. "The next thing imputed against the defendant is that there was a want of energy in his conduct in not ordering the military to fire upon the rioters. Upon this part of the case it appears that he was intending to do so, but was dissuaded by Colonel Brereton and also by Major Mackworth, and if the defendant had given an order to fire upon the rioters, and death had ensued, he would, upon an indictment for murder or manslaughter, have had great difficulty to defend himself, if it had appeared that he had given the order to fire against the advice of two distinguished military officers." As to the liability of subordinates see *M.M.L.*, ch. viii. para. 98.

courts of justice for anything he may do in executing the duty imposed on him by the civil magistrate, namely, to quell the riot (a).

The answer is, that an officer has no greater responsibility than a civilian. Mr. Justice Littledale, in the case of *R. v Pinney*, says :—

“ Now a person, whether a magistrate or a peace officer, who has the duty of suppressing a riot, is placed in a very difficult situation, for if by his acts he causes death, he is liable to be indicted for murder or manslaughter ; and if he does not act he is liable to an indictment on an information for neglect ; he is therefore bound to hit the precise line of his duty, and how difficult it is to hit that precise line will be matter for your consideration ; but that, difficult as it may be, he is bound to do. Whether a man has sought a public situation, as is often the case of mayors and magistrates, or whether as a peace officer he has been compelled to take the office that he holds, the same rule applies, and if persons were not compelled to act according to law, there would be an end of society.”

At the same time the law has always made liberal allowance for the difficulties of persons so circumstanced, and persons whose intention is honest and upright, and who act with firmness to the best of their judgment, need seldom fear the results of inquiry into their conduct.

(a) Remarks on Military Law (1837) 38, quoted Clode, Mil. Forces, ii. 153.

PART II.

THE ARMY ACT, 1881.

AN Act to consolidate the Army Discipline and Regulation Act, 1879, and the subsequent Acts amending the same. [44 & 45 Vict., c. 58.]

THE ARMY ACT, 1881.

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SCHEDULES.

THE ARMY ACT, 1881.

An Act to consolidate the Army Discipline and Regulation Act, 1879, and the subsequent Acts amending the same.
(a).

[44 & 45 Vict., c. 58]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

1. This Act may be cited for all purposes as the Army Short title of Act. Act, 1881.

2. This Act shall continue in force only for such time Mode of bringing Act into force. and subject to such provisions as may be specified in an annual Act of Parliament bringing into force, or continuing the same.

For explanation of the reasons for bringing this Act into force annually by a separate Act, see M. M. L., Chapter II, page 13, note (f); and para. 35.

3. This Act is divided into five parts, relating to the Division of Act. following subject-matter ; that is to say,

Part I, discipline :

Part II, enlistment :

Part III, billeting and impressment of carriages :

Part IV, general provisions :

Part V, application of military law, saving provisions, and definitions.

(a) The Act is printed with the amendments introduced by the Army (Annual) Act, 1882, and the subsequent Annual Acts down to and inclusive of the Act of 1887.

PART I.

DISCIPLINE.

CRIMES AND PUNISHMENTS.

Part I.

Offences in respect of Military Service.

Offences in
relation to
the enemy
punishable
with death.

4. Every person subject to military law who commits any of the following offences ; that is to say,

- (1.) Shamefully abandons or delivers up any garrison, place, post, or guard, or uses any means to compel or induce any governor, commanding officer, or other person shamefully to abandon or deliver up any garrison, place, post, or guard, which it was the duty of such governor, officer, or person to defend ; or
- (2.) Shamefully casts away his arms, ammunition, or tools in the presence of the enemy ; or
- (3.) Treacherously holds correspondence with or gives intelligence to the enemy, or treacherously or through cowardice sends a flag of truce to the enemy ; or
- (4.) Assists the enemy with arms, ammunition, or supplies, or knowingly harbours or protects an enemy not being a prisoner ; or
- (5.) Having been made a prisoner of war, voluntarily serves with or voluntarily aids the enemy ; or
- (6.) Knowingly does when on active service any act calculated to imperil the success of Her Majesty's forces or any part thereof ; or
- (7.) Misbehaves or induces others to misbehave before the enemy in such manner as to show cowardice, shall on conviction by court-martial be liable to suffer

death, or such less punishment as is in this Act mentioned. Part I.

Subject to military law.—This includes not only officers and soldiers, but also camp followers, sutlers, &c. See ss. 175, 176, and as to natives of India, s. 180.

Sub-section (1). *Shamefully abandons*, &c. This offence can only be committed by the person in charge of the garrison, post, &c., and not by the subordinates under his command. The surrender of a place by an officer charged with its defence can only be justified by the utmost necessity, such as want of provisions or water, the absence of hope of relief, and the certainty or extreme probability that no further efforts could prevent the place with its garrison, their arms and magazines, falling into the hands of the enemy. Unless the necessity is shown, the conclusion must be that the surrender or abandonment was shameful, and therefore a crime under this section. The word *post* includes any point or position (whether fortified or not) which a detachment may be ordered to hold: and the abandonment of a post would also include the abandonment of a siege if there were no circumstances to warrant such a measure. It has not the same meaning as in s. 6 (1), where it applies to an individual.

A charge under the first part of this sub-section must detail some circumstances which make the abandonment in a military sense shameful.

Sub-section (2). *Shamefully casts away*. The charge must show the circumstances which make the act in a military sense shameful. The word "shamefully" is held to mean by a positive and disgraceful dereliction of duty, and not merely through negligence or misapprehension or error of judgment.

Sub-section (3). *Treacherously*. The charge must show the circumstances which indicate the treachery or cowardice. If there is no treachery or cowardice, the charge should be laid under section 5 (4).

Sub-section (4). *Supplies*. This would include the taking any step to restore a supply of water cut off by our forces.

Knowingly. Evidence should if possible be given that the prisoner knew the person harboured or protected to be an enemy; but if the fact of the harbouring or protecting is proved, the court may infer knowledge from the circumstances. The same observation applies to "voluntarily" in (5) and to "knowingly" in (6).

Sub-section (6). For definition of active service, see s. 189.

Sub-section (7). This sub-section is confined to acts, words, neglects, or omissions which show cowardice, and the charge must be framed accordingly. Drunkenness or treachery (unaccom-

Part I. panied by cowardice) cannot be dealt with under this sub-section.

Misbehaves.—This means that the accused, from an unsoldierlike regard for his personal safety in the presence of the enemy, failed in respect of some distinct and feasible duty imposed upon him by a specified order or regulation, or by the well understood custom of the service, or by the requirements of the case, as applicable to the position in which he was placed at the time.

Offences in relation to the enemy not punishable with death.

5. Every person subject to military law who on active service commits any of the following offences ; that is to say,

- (1.) Without orders from his superior officer leaves the ranks, in order to secure prisoners or horses, or on pretence of taking wounded men to the rear ; or
- (2.) Without orders from his superior officer wilfully destroys or damages any property ; or
- (3.) Is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner fails to rejoin Her Majesty's service when able to rejoin the same ; or
- (4.) Without due authority either holds correspondence with, or gives intelligence to, or sends a flag of truce to the enemy ; or
- (5.) By word of mouth or in writing, or by signals, or otherwise, spreads reports calculated to create unnecessary alarm or despondency ; or
- (6.) In action, or previously to going into action, uses words calculated to create alarm or despondency,

shall on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

Sub-section (4). *Without due authority.* If *prima facie* a want of authority is shown, it will rest with the prisoner to show that he had authority, but any evidence of his having had authority which is known to the prosecutor should be adduced by the prosecutor. See rule 59 (A), and note. The terms of this sub-section include any unauthorised communication of intelligence to the enemy even by indirect methods, such as sending letters or

sketches, or plans, to friends or newspapers. As to injurious disclosures not on active service, see s. 36.

Every one present with an army should bear in mind that the publication of letters from the army containing facts and opinions, often entirely erroneous, relating to the operations or prospects of the campaign, can scarcely fail to have mischievous results: and it is well known that both during the Peninsular and Crimean wars, the enemy were indebted for information to English newspapers. See G.O. of Duke of Wellington dated Celorico, 10 Aug., 1810, quoted in Simmons on Courts-Martial, p. 67.

Sub-section (5). The charge must detail the reports alleged to have been spread, and should indicate how they were calculated to create unnecessary alarm or despondency. A similar remark applies to a charge under (6). It is not necessary to aver or prove that the reports were false,—indeed the truth may increase the offence;—nor is it necessary to show that any effect was actually produced by the reports spread or words used: it could, however seldom be expedient to try an officer or soldier under this section for expressions which could not be shown to have had some effect. The offence under sub-section (5) may be committed either with reference to the troops with whom the offender is serving, or with reference to the inhabitants of the country.

6. (1.) Every person subject to military law who commits any of the following offences; that is to say,

Offences punishable more severely on active service than at other times.

- (a.) Leaves his commanding officer to go in search of plunder; or
- (b.) Without orders from his superior officer, leaves his guard, picquet, patrol, or post; or
- (c.) Forces a safeguard; or
- (d.) Forces or strikes a soldier when acting as sentinel; or
- (e.) Impedes the provost-marshal, or any assistant provost-marshal, or any officer or non-commissioned officer, or other person legally exercising authority under or on behalf of the provost-marshal, or, when called on, refuses to assist in the execution of his duty the provost-marshal, assistant provost-marshal, or any such officer, non-commissioned officer, or other person; or
- (f.) Does violence to any person bringing provisions or

(A.M.L.)

K 2

Part I.

supplies to the forces; or commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving; or

(g.) Breaks into any house or other place in search of plunder; or

(h.) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, intentionally occasions false alarms in action, on the march, in the field, or elsewhere; or

(i.) Treacherously makes known the parole, watchword, or countersign, to any person not entitled to receive it, or treacherously gives a parole, watchword, or countersign different from what he received; or

(j.) Irregularly detains or appropriates to his own corps, battalion, or detachment any provisions or supplies proceeding to the forces, contrary to any orders issued in that respect; or

(k.) Being a soldier acting as sentinel, commits any of the following offences; that is to say,

(i) sleeps or is drunk on his post; or

(ii) leaves his post before he is regularly relieved,

shall, on conviction by court-martial,

if he commits any such offence on active service, be liable to suffer death, or such less punishment as is in this Act mentioned; and

if he commits any such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(2.) Every person subject to military law who commits any of the following offences; (that is to say,)

Misbehaviour of
sentinel.

- (a.) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, negligently occasions false alarms in action, on the march, in the field, or elsewhere; or
- (b.) Makes known the parole, watchword, or countersign to any person not entitled to receive it; or, without good and sufficient cause, gives a parole, watchword or countersign different from what he received,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

The punishment for the offences mentioned in sub-section (1) of this section differ very widely according as they are committed on active service or not on active service; and where a man is charged with committing any of them on active service, those words must always be inserted in the charge. For the definition of active service see section 189.

Sub-section (1.) (a.) It is obvious that the offences mentioned in (a) and in (g) can only be committed on active service.

(b.) *Post.* As used with respect to an individual this word refers to the position or place which it may be the duty of an officer or soldier to be in, especially when under arms: and with respect in particular to a sentry, it applies to the spot where the sentry is left to the observance of his duties by the officer or non-commissioned officer posting him; or to any limits specially pointed out as his walk. In determining what, in any particular case, is a post, the court will use their military knowledge. See Q.R., 1885, sect. VI, para. 76 (as to gate-duty), and note to (k) below.

(c.) *Safeguard.* A safeguard is a party of soldiers detached for the protection of some person or persons, or of a particular village, mansion, or other property. A single sentry posted from such party is still part of the safeguard and it is as criminal to force him by breaking into the house, cellar, or other property under his especial care as to force the whole party. See M.M.L., Chapter XIV, para. 66 and note.

(e.) The court may exercise their military knowledge as to a person being a provost-marshal assistant provost-marshal, or a

Part I. person legally exercising authority under or on behalf of the provost-marshal; but it will be open to the accused to show that the person he is charged with impeding was not properly appointed provost-marshal or assistant provost-marshal, or was not legally exercising the above-mentioned authority.

(f.) It is frequently of the highest importance to conciliate the inhabitants of the country where the troops happen to be, and to induce them to bring provisions and supplies. In this point of view an offence which in other circumstances would be trivial, may require exemplary punishment. For instance, if a trifling theft has the effect of disturbing the confidence of the inhabitants and endangering the supplies of the army, the offence deserves very severe punishment. As an offence under the sub-section will really be a civil offence when not committed on active service, a person should not be charged under this sub-section when the offence is committed in the United Kingdom or in any other place where there is a civil court competent conveniently to deal with the case. On the other hand, on active service, offences which, if committed in the United Kingdom, would be tried by a civil court, may be better tried under this enactment. For instance, a sutler accused of rape committed on an inhabitant of the country might properly be tried under it. The charge must set out the specific acts of violence or the specific offence alleged to have been done or committed.

(g.) The house or other place should be specified in the charge.

(h.) The charge must set out exactly the signal made or the words used. If means are used other than words they must be specified briefly in the particulars of the charges; and the same remark applies to the statement of the "elsewhere."

Intentionally. See note to s. 4 (4), as to "knowingly," and M.M.L., Chapter VII, para. 41.

(i.) Although treachery must be averred in a charge under this sub-section, and want of good and sufficient cause in a charge under sub-section 2 (b), the charge need not detail the circumstances of the treachery or of the absence of good and sufficient cause. Upon proof that the accused made known the watchword to a person not entitled to receive it, or gave a watchword different from what he received, the court will be at liberty to infer the treachery or the absence of good and sufficient cause, unless the accused can show that he acted from good cause and not treacherously. The charge must aver or show that the person was not entitled to receive the watchword.

Watchword will include any authorised pass-word not being parole or countersign which might, for example, be adopted for a particular emergency.

(j.) The charge must show how the act charged was irregular and contrary to orders. Part I.

(k.) *Post.* See note to (1) (b) above. The fact of a sentry not being regularly posted is immaterial. A soldier is liable, if being one of the guard or body furnishing the sentry for the post, he has undertaken the duty of sentry, even though not posted in the regular way by a non-commissioned officer. A sentry found drunk a short distance from his post should be charged with leaving his post: he cannot properly be charged with being drunk on his post, though he may be charged with drunkenness on duty. As to "stablemen," see Q.R., 1885, Sect. VI, para. 77.

(2.) (a.) See note to (1) (h) above. This sub-section applies only to false alarms among the troops.

(b.) See note to (1) (i) above.

Mutiny and Insubordination.

7. Every person subject to military law who commits any of the following offences; that is to say, Mutiny and
sedition.

- (1.) Causes or conspires with any other persons to cause any mutiny or sedition in any forces belonging to Her Majesty's regular, reserve, or auxiliary forces, or Navy; or
- (2.) Endeavours to seduce any person in Her Majesty's regular, reserve, or auxiliary forces, or Navy, from allegiance to Her Majesty, or to persuade any person in Her Majesty's regular, reserve, or auxiliary forces, or Navy, to join in any mutiny or sedition; or
- (3.) Joins in, or being present does not use his utmost endeavours to suppress any mutiny or sedition in any forces belonging to Her Majesty's regular, reserve, or auxiliary forces, or Navy; or
- (4.) Coming to the knowledge of any actual or intended mutiny or sedition in any forces belonging to Her Majesty's regular, reserve, or auxiliary forces, or Navy, does not without delay inform his commanding officer of the same,

shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned.

Part I. Sub-section (1). *Mutiny or sedition.* See as to these offences, Chapter I, paras. 4-6. A man might be tried under this sub-section for conspiring to cause a mutiny though the conspiracy proved abortive, and no mutiny took place.

Sub-section (2). Civilians who endeavour to seduce any person serving in Her Majesty's forces by sea or land from allegiance to Her Majesty, or to incite any such person to commit any traitorous practice whatsoever, are liable on conviction by a civil court to penal servitude for life under 37 Geo. III, c. 70, as amended by 7 Will. IV and 1 Vict. c. 91.

Sub-section (3). *Being present.* Doubts might well arise whether men present when a mutiny was being contrived or had actually begun were actually joining in it or not. This sub-section provides that if they are present and do not use their utmost endeavours to suppress it, they will be equally guilty as if they took that active part which constitutes joining in a mutiny. Consequently, men present on parade, or present accidentally, or induced by false pretences to attend a meeting where a mutiny is begun or contrived, will be guilty of an offence under this sub-section although they took no active part, and therefore can hardly be said to have joined in the mutiny. If a doubt exists as to whether any individual did or did not take such an active part as to have joined in the mutiny, he may be charged in alternative charges under sub-section (1) and this sub-section.

Each one of a body of men not marching, or not coming from their barrack room when duly ordered, is guilty of mutiny, if he cannot show that his disobedience was occasioned solely by reason of compulsion.

Utmost endeavours. This does not necessarily mean the utmost of which a man is capable, but such endeavours as a man might be reasonably and fairly expected to make.

(4.) *Commanding officer.* This expression will include any person having a military command over the person who has knowledge of the mutiny or sedition, and is not limited by Rule 128. A private soldier, for example, would properly inform his serjeant, and information so given would be held to be given to his commanding officer within the meaning of the section.

8. (1.) Every person subject to military law who commits any of the following offences; that is to say,

Strikes or uses or offers any violence to his superior officer, being in the execution of his office, shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned; and

Striking or threatening superior officer.

(2.) Every person subject to military law who commits any of the following offences; that is to say,¹

Strikes or uses or offers any violence to his superior officer, or uses threatening or insubordinate language to his superior officer,
shall on conviction by court-martial,

if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(1.) *In the execution of his office.* It is difficult accurately to define these words, but the military knowledge and experience of the members of a court-martial will enable them in most instances readily to determine whether the superior is or is not in the execution of his office. An officer in plain clothes may undoubtedly be in the execution of his office; but where the officer is in plain clothes, it becomes necessary to prove some knowledge on the part of the soldier at the time of offering the violence that the person assaulted was an officer, which is not the case where the officer is in uniform. On the other hand, there may be circumstances in which an officer in uniform is not in the execution of his office. A corporal asleep in the barrack room of which he was in charge would probably be held to be within the protection of this section.

An officer or non-commissioned officer in quarters is in the execution of his office.

A serjeant out of barracks ordering a disorderly soldier to return to barracks is in the execution of his office.

Offers any violence. These words include any defiant gesture or act which if completed would end in actual violence, but do not extend to an insulting or impertinent gesture or act from which violence could not result. For example, a soldier throwing down his arms or his accoutrements on parade, or throwing away his cap or belt in an impertinent manner, but in such a direction that they could not strike a superior, could not be deemed to offer violence within the meaning of this enactment. So also a man shaking his fist, or even drawing a bayonet, or otherwise making a show of violence against a superior behind the bars of a cell or at

Part I. — such a distance that striking him was at the moment impossible, is not guilty of offering violence. On the other hand, throwing a missile, or pointing a loaded firearm at a superior would come within the section.

If the violence be used in self-defence, for instance, if it be shown that it was necessary, or that at the moment the prisoner had reason to believe it was necessary for his actual protection from injury, and that he used no more violence than was reasonably necessary for this purpose, he is legally justified in using it, and commits no offence.

Provocation is not a ground of acquittal, but tends to mitigate the punishment; evidence of provocation, if tendered, must therefore be admitted in order to render the sentence valid.

Threatening or insubordinate language. Where the charge is for threatening or insubordinate language the particulars of the charge must state the expressions or their substance, and the superior to whom they were addressed.

Expressions used merely for exculpation would not be punishable under this section. It has been ruled that "expressions, however offensive to a superior, that are used (1) in the course of a judicial inquiry, (2) by a party to that inquiry, and (3) upon a matter pertinent to and *bonâ fide* for the purposes of that inquiry, as, for instance, the credibility of a witness, are privileged, and cannot be made the subject of a criminal charge."

Expressions used of a superior officer and not within his hearing, or which cannot be proved to be used to a superior officer, must be charged as an offence under s. 40, and not under this section.

But insubordinate or threatening language regarding one superior if used to (in the sense that it should be heard by) another superior, is an offence under this section.

The words must be used with an insubordinate intent, that is to say, they must be, either in themselves or in the manner or circumstances in which they are spoken, insulting or disrespectful, and in all cases it must reasonably appear that they were intended to be heard by a superior.

As to the use of coarse and abusive language by a man when drunk, see Chapter I, paras. 30, 31; and for general observations on insubordinate language, see Chapter III, para. 86.

Improper language not amounting to insubordinate language, or which cannot be proved to be used to a superior officer, must be charged under s. 40.

As to active service see the beginning of note to section 6.

Superior officer. The court should be satisfied, before conviction, that the prisoner knew the person struck to be a superior officer. If the superior did not wear the insignia of his rank, and was not

personally known to the prisoner, evidence would be necessary to shew that the prisoner was otherwise aware of his being of superior rank, the intention being of the essence of the offence.

A charge alleging that a prisoner "attempted to strike" or "struck at" a superior officer, though objectionable as not following the words of the Act, has been held good.

A lance corporal while acting as orderly serjeant is the superior of all other lance corporals.

A private soldier while placed temporarily in command of a guard is, for the time being, the "superior officer" of the other private soldiers over whom he is placed.

9. (1.) Every person subject to military law who commits the following offence; that is to say, Disobedience to superior officer.

Disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office, whether the same is given orally, or in writing, or by signal, or otherwise,

shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned; and

(2.) Every person subject to military law who commits the following offence; that is to say,

Disobeys any lawful command given by his superior officer, shall, on conviction by court-martial,

if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Disobeys in such manner . . . any lawful command. The charge must specify the command, and that it was given personally, and must show the manner in which the disobedience showed a wilful defiance of authority; see Chapter I, paras. 8-10. The particulars should also show how the officer was in the execution of his office (see note to s. 8), but the court may make use of

Part I. — their military knowledge for determining whether the officer was in the execution of his office, and whether he was a superior officer.

The command must be one relating to military duty, that is to say, the disobedience of it must tend to impede, delay, or prevent a military proceeding. Thus a command given by an officer to his soldier-servant to perform some domestic office not relating to military duty is not a command within the meaning of this section. A soldier who refuses to take a letter relating to private theatricals upon the order of a non-commissioned officer does not disobey a lawful command.

Religious scruples furnish no excuse for disobedience.

The disobedience must be immediate or proximate to the command, and actual non-compliance must be proved. A man who says "I will not do it," does not necessarily disobey. A man who when ordered to do a duty at a future time says "I will not do it," does not thereby commit an offence under this section, though he may be liable under s. 8 (2). See Chapter I, para. 9.

Disobeying lawful command. To establish an offence under (2) it is not requisite to prove that the command was given personally by a superior. It is sufficient to show that it was given by the deputy or agent of a superior, whom according to the usages of the service or for other reasons the prisoner might reasonably suppose to have been duly authorised to notify to him the command of his superior.

An omission arising from misapprehension or forgetfulness is not an offence under this section. The act of a soldier who declines to sign his accounts upon the ground that they are incorrect is not an offence under this section.

If obedience to the command were physically impossible, the failure to obey would not be an offence under this section.

As to active service, see Chapter I, para. 33, and note to s. 6.

As to disobedience of general or garrison orders, see s. 11.

Insurrection.

10. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Being concerned in any quarrel, fray, or disorder, refuses to obey any officer (though of inferior rank) who orders him into arrest, or strikes or uses or offers violence to any such officer; or
- (2.) Strikes or uses or offers violence to any person, whether subject to military law or not, in whose

custody he is placed, and whether he is or is not his superior officer ; or

(3.) Resists an escort whose duty it is to apprehend him or to have him in charge ; or

(4.) Being a soldier breaks out of barracks, camp, or quarters,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Sub-section (1). A person may be charged under this sub-section whether the officer who ordered him into arrest was of inferior or superior rank, but where the officer was of superior rank, the offender may be charged also under s. 9. Only officers should be charged under this sub-section.

Sub-section (2). It will be observed that a charge may be made under this sub-section for assaulting a civilian policeman.

Sub-section (3). The court will use their military knowledge to determine whether it was the duty of the escort to apprehend the prisoner or to have him in charge.

Under this sub-section the resistance may be passive. A man lying down and refusing to move, if physically able to move, resists.

Sub-section (4). *Breaks out of barracks, &c.* This offence consists in a soldier quitting barracks, &c., at a time when he had no right to do so, either because he was on duty or under punishment, or because of some regulation ; and it is immaterial whether the offence was managed by violence, stratagem, disguise, or simply by walking past a sentry unnoticed. The mode in which the act was effected will, however, assist a commanding officer in determining whether to deal with it as a mere breach of discipline under this sub-section, or to reserve it for trial as amounting to desertion. The particulars of the charge must show that the absence from barracks, &c., was without permission or otherwise unlawful.

If the charge be for breaking out of barracks, it must be proved that the prisoner left the confines of the barracks as charged, and so also if the charge is for breaking out of camp. A charge of breaking out of quarters would hold good in the case of a man improperly leaving one part of a barrack for another, where he had no right to be. But leaving a hut or tent or barrack room is not an offence under this section.

Part I

Neglect to
obey garri-
son or other
orders.

11. Every person subject to military law who commits the following offence ; that is to say,

neglects to obey any general or garrison or other orders, shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned

Provided that the expression "general orders" in this section shall not include Her Majesty's regulations and orders for the army, or any similar order in the nature of a regulation published for the general information and guidance of the army.

The orders specified in this section are standing orders or orders having a continuous operation, whether garrison or regimental, or of a like nature. Disobedience of a specific order in the nature of a command should be dealt with under s. 9, and non-compliance through forgetfulness or negligence with an order to do some specific act at a future time under s. 40.

Ignorance of the order is not an exculpation if the order is one which the prisoner ought in the ordinary course to know. But a misapprehension reasonably arising from want of clearness in the order is a ground of exculpation.

The existence of the orders and the fact of the neglect must be proved. Disobedience to a Q.R. may be punished under s. 40, but if a Q.R. is published as a regimental order, it acquires also the character of a regimental order, and disobedience to it may be punished accordingly.

Desertion, Fraudulent Enlistment, and Absence without Leave.

Desertion.

12. (1.) Every person subject to military law who commits any of the following offences ; that is to say,

(a.) Deserts or attempts to desert Her Majesty's service ; or

(b.) Persuades, endeavours to persuade, procures or attempts to procure any person subject to military law to desert from Her Majesty's service, shall, on conviction by court-martial,

if he committed such offence when on active service or under orders for active service, be liable to suffer death, or such less punishment as is in this Act mentioned ; and

if he committed such offence under any other circumstances, be liable for the first offence to suffer imprisonment, or such less punishment as is in this Act mentioned ; and for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.

(2.) Where an offender has fraudulently enlisted once or oftener, he may for the purposes of trial for the offence of deserting or attempting to desert Her Majesty's service, be deemed to belong to any one or more of the corps to which he has been appointed or transferred as well as to the corps to which he properly belongs ; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly ; and further, it shall be lawful, on conviction of a person for two or more such offences, to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.

(3.) For the purposes of the liability under this section to the higher punishment for a second offence, a previous offence of fraudulent enlistment may be reckoned as a previous offence under this section.

See Chapter I, paras. 13-20 ; Q.R., 1885, Sect. VI, paras. 126-158A. *On active service.* See beginning of note to s. 6.

The offence of fraudulent enlistment is dealt with in s. 13. As to a false statement by a soldier to his commanding officer that he has been guilty of desertion or fraudulent enlistment, see s. 27 (8).

For provisions as to inquiry into absence and confession of desertion or fraudulent enlistment see ss. 72, 73 ; and as to liability to general service or transfer on conviction for, or confession of, desertion or fraudulent enlistment, see s. 83 (7) ; and as to liability to transfer of soldier delivered into military custody or committed

Part I. by a court of summary jurisdiction as a deserter, see s. 83 (8); and as to descriptive reports of deserters, escorts, and generally Q. R., 1885, Sect. VI, paras. 126-153A. A person charged with desertion may, under s. 56 (3), be found guilty of attempting to desert, or of being absent without leave.

If a prisoner is tried for two offences of desertion by the same court-martial, the charges should be in separate charge sheets and the trials distinct; but if convicted on both charges he can be awarded the higher punishment allowed for a second offence. So also if he is tried for fraudulent enlistment and desertion, the two offences must be included in separate charge sheets, but if he is convicted of both by the same court, he may be awarded the higher punishment.

The case is similar where the charge is of fraudulent enlistment under s. 13; but in that case, if he has deserted first, and fraudulently enlisted afterwards, he cannot be awarded the higher punishment unless he has served between the date of the desertion and the date of the fraudulent enlistment. See s. 13 (2) (3).

For example, if a soldier deserted on the 1st of October, 1887, and was apprehended, convicted, and punished, and having undergone his punishment, returns to the ranks, and on the 10th of March, 1888, fraudulently enlists, then, on conviction for such fraudulent enlistment, he can be sentenced to penal servitude, just as if the former conviction for desertion had been a conviction for fraudulent enlistment.

If, however, a soldier thus deserts on the 5th of January, 1888, and is not apprehended, and on the 15th of February, while still in a state of desertion, fraudulently enlists, then, although he may be convicted both of the desertion and of the fraudulent enlistment, he cannot be sentenced to penal servitude for the fraudulent enlistment, as the desertion was his absence "next before the fraudulent enlistment" and the exception in s. 13 (3) applies.

Where the desertion and fraudulent enlistment form in effect one transaction, the man should not as a rule be tried for both offences.

Any person who falsely represents himself to any authority to be a deserter may be punished by a civil court of summary jurisdiction by three months' imprisonment (s. 152); see also as to punishment by a like court of persons inducing soldiers to desert, s. 153; and as to the apprehension of deserters, s. 154.

To establish desertion it is necessary to prove some circumstance justifying the inference that the prisoner intended not to return to military duty in any corps, or intended to avoid some important particular service, such as active service, embarkation for foreign service, or service in aid of the civil power.

Attempt to Desert.—To establish an attempt to desert, some act which, if completed, would constitute desertion, as above mentioned, must be proved. A mere intention to desert does not amount to an attempt to desert.

Part I.
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13. (1.) Every person subject to military law who commits any of the following offences ; that is to say, Fraudulent enlistment.

- (a.) When belonging to either the regular forces, or the militia, when embodied, without having first obtained a regular discharge therefrom, or otherwise fulfilled the conditions enabling him to enlist, enlists in Her Majesty's regular forces, or
 - (b.) When belonging to the regular forces without having fulfilled the conditions enabling him to enlist, enrol, or enter, enrolls himself, or enlists in the militia or in any of the reserve forces, not subject to military law, or enters the Royal Navy,
- shall be deemed to have been guilty of fraudulent enlistment, and shall on conviction by court-martial be liable—
- (i.) for the first offence to suffer imprisonment, or such less punishment as is in this Act mentioned ; and
 - (ii.) for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.

(2.) When an offender has fraudulently enlisted on several occasions he may, for the purposes of this section, be deemed to belong to any one or more of the corps to which he has been appointed or transferred, as well as to the corps to which he properly belongs ; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly ; and further, it shall be lawful, on conviction of a person for two or more such offences, to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.

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Part I. (3.) Where an offender is convicted of the offence of fraudulent enlistment, then, for the purposes of his liability under this section to the higher punishment for a second offence, the offence of deserting, or attempting to desert Her Majesty's service, may be reckoned as a previous offence of fraudulent enlistment under this section, with this exception, that the absence of the offender next before any fraudulent enlistment shall not, upon his conviction for that fraudulent enlistment, be reckoned as a previous offence of deserting or attempting to desert.

See Q. R., 1885, Sect. VI, paras. 133-143.

The charge must specify the force to which the accused belonged at the time of his enlistment. A militiaman enlisting, when not embodied, cannot be charged under this section, though he may be charged under s. 33, for making a false answer. See also as to militiaman, 45 & 46 Vict., c. 49, s. 26.

Where a soldier is charged with fraudulent enlistment (by reason of which he has obtained a free kit) the receipt of that free kit must be mentioned in the charge, and proved in evidence in order to enable the court to sentence him to a deduction from his pay as compensation for the free kit, but the charge of fraudulently obtaining a free kit cannot by itself be maintained; see Q. R., 1885, Sect. VI, para. 78, and Rules, First Appendix, note as to use of Forms of Charges (23), p. 479.

Where the fraudulent enlistment has taken place more than three years before the trial, the obtaining of a free kit should not be mentioned in the charge, as a sentence of stoppages based upon that circumstance is illegal.

A copy or duplicate of the attestation paper is proof of the enlistment, and the issue of a free kit may be proved by a copy of a record thereof in the regimental books (s. 163, *g* and *h*).

Sub-section (3). As to conviction for two offences, and the punishment for the second offence, see note to s. 12.

Assistance
of or con-
nivance at
desertion.

14. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Assists any person subject to military law to desert Her Majesty's service; or
- (2.) Being cognisant of any desertion or intended desertion of a person subject to military law, does not forthwith give notice to his commanding officer,

Part I.

or take any steps in his power to cause the deserter, or intending deserter, to be apprehended, shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

Sub-section (1). It must be proved that the prisoner knew that the assistance given by him was for the purpose of the desertion.

Sub-section (2). *Does not forthwith give notice.* The time at which the accused became cognisant of the desertion, and, if he gave notice to his commanding officer, the time at which he gave notice, are material and should be specified in the charge.

Commanding officer. This includes any person having military command over the accused. The court may use their military knowledge in determining whether the person is for this purpose a commanding officer or not. See note to s. 7 (4).

If the charge is under the latter part of (2), the charge must allege the steps which it was in the power of the accused to take in order to cause the deserter, or intending deserter, to be apprehended.

15. Every person subject to military law who commits any of the following offences: that is to say,

Absence
from duty
without
leave.

- (1.) Absents himself without leave ; or
 - (2.) Fails to appear at the place of parade or rendezvous appointed by his commanding officer, or goes from thence without leave before he is relieved, or without urgent necessity quits the ranks ; or
 - (3.) Being a soldier, when in camp or garrison, or elsewhere, is found beyond any limits fixed or in any place prohibited by any general, garrison, or other order, without a pass or written leave from his commanding officer ; or
 - (4.) Being a soldier, without leave from his commanding officer, or without due cause, absents himself from any school when duly ordered to attend there, or
- shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Part I. (1.) *Absents himself.* See Chapter I, paras. 13-19; and for the power of summary award of the commanding officer see s. 46 (4) (5).

In charges under this section, if the absence or failure to appear or other act is proved, it will lie on the accused to show that he had leave or was under urgent necessity and had due cause for the absence, failure, or other act. A soldier tried for desertion or attempted desertion may under s. 56 be found guilty of absence without leave. When a soldier has been absent without leave for 21 days, a court of inquiry will assemble; s. 72.

The absence must be from military supervision, i.e., the place where it is the soldier's duty to be, and where he can be found if wanted. Usually it must be absence from his barrack, camp, or station, but if his duty is to be in one part of the barrack, or he cannot be found when wanted, his absence from a part only of the barracks may amount to absence without leave.

If the hour of his absence is material for the purpose of proving a day's absence (see s. 138 and note, and s. 140), the hours of his departure and return must be stated in the particulars.

Involuntary absence, caused, for example, by disability through illness or detention in custody by the civil power, even though arising from the wrongful act of the accused, is not an offence under this section.

Under sub-section (2) the particular parade should be specified, so that the prisoner may be able to show, if he can, that he was not by order or custom, or for other reasons, bound to attend that parade.

Under sub-section (3) ignorance of the order, though it would properly tend to mitigate the punishment, does not entirely exculpate the prisoner. But misapprehension reasonably arising from want of clearness in the order may be a ground of exculpation.

A man absent without leave is not also liable to trial for failing to attend the parades, &c., during the period of his absence, and if he is tried on alternative charges for both offences, he can be convicted only upon one of the charges.

Sub-sections (3) and (4). *Commanding officer.* Any officer having military command over the accused and authority to grant leave will be commanding officer within these sub-sections. This matter can therefore be determined by the military knowledge of the court.

Disgraceful Conduct.

Scandalous
conduct of
officer.

16. Every officer who, being subject to military law, commits the following offence; that is to say,

behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall on conviction by court-martial be cashiered. Part I.

An act or neglect which amounts to any of the offences specified in the Act, or which is to the prejudice of good order and military discipline, ought not, as a rule, to be tried under this section. Scandalous conduct may be either of a military or social character. But a charge of a social character is not to be preferred under this section, unless it is of so grave a nature as to render the officer unfit to remain in the service, and therefore is scandalous in respect of his military character. Social misconduct which is not so grave as to bring scandal on the service, should not be made a ground of charge against an officer, but may well form the subject of reproof and advice on the part of his colonel or other superior officer.

17. Every person subject to military law who commits any of the following offences ; that is to say, Fraud by persons in charge of money or goods.

Being charged with or concerned in the care or distribution of any public or regimental money or goods, steals, fraudulently misapplies, or embezzles the same, or is concerned in or connives at the stealing, fraudulent misapplication, or embezzlement thereof, or wilfully damages any such goods, shall on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

The distinction between stealing and the other offences is roughly this—that a man is not said to steal a thing if, previously to the time at which he converted it to his own use, he was lawfully in possession of it. See M.M.L., Chapter VII, para. 171 and exceptions, and paras. 175-178, 182.

This section does not apply to ordinary thefts, which are dealt with in s. 18 (4), but to those more serious offences committed by persons in a position of trust in relation to public or regimental property, where placed under their charge. The severe punishment of penal servitude can therefore be given. Under s. 56 a prisoner charged with stealing may be found guilty of embezzlement or of fraudulent misapplication ; and a prisoner charged with embezzlement may be found guilty of stealing or of fraudulent misapplication.

Part I. If the charge is for fraudulent misapplication or embezzlement, it must allege that the property was improperly applied for the use of the accused himself or some person connected with him, and not for a public purpose.

If no evidence is forthcoming as to the particular mode of misapplication, the court may, in the absence of explanation from the accused, infer that the property was misapplied from the fact of its not having been properly applied. See M.M.L., Chapter VII, para. 188.

Each instance of embezzlement should be in a separate charge. See p. 492, note.

A mere error or irregularity in accounts, or a mistaken misapplication of money or goods, does not constitute an offence under this section. There must be an intent to defraud on the part of the accused, either for the benefit of himself or somebody else; and this must be particularly recollected in the case (for example) of a non-commissioned officer's accounts getting into confusion, through the neglect or carelessness of superiors.

The charge must show in detail that the prisoner was charged with or concerned in the care or distribution of the money or goods which are alleged to have been fraudulently misapplied or embezzled, but the court may use their military knowledge to determine that the accused, if holding a particular office, was, by virtue of his office, so charged or concerned. A soldier posted as sentry over a place containing public property, would not be "charged with" the care of the property within this section.

The expression "charged with" means officially charged with, that is to say, in virtue of the public office the accused formally holds. A corporal or private entrusted by a pay-serjeant for his own convenience with public money would not fall under this section, although he might be convicted under s. 18.

Disgraceful
conduct of
soldier.

18. Every soldier who commits any of the following offences; that is to say,

- (1.) Malingers, or feigns or produces disease or infirmity,
or
- (2.) Wilfully maims or injures himself or any other soldier, whether at the instance of such other soldier or not, with intent thereby to render himself or such other soldier unfit for service, or causes himself to be maimed or injured by any person, with intent thereby to render himself unfit for service; or
- (3.) Is wilfully guilty of any misconduct, or wilfully

disobeys, whether in hospital or otherwise, any orders, by means of which misconduct or disobedience he produces or aggravates disease or infirmity, or delays its cure ; or

(4.) Steals or embezzles or receives knowing them to be stolen or embezzled any money or goods the property of a comrade or of an officer, or any money or goods belonging to any regimental mess or band, or to any regimental institution, or any public money or goods ; or

(5.) Is guilty of any other offence of a fraudulent nature not before in this Act particularly specified, or of any other disgraceful conduct of a cruel, indecent, or unnatural kind,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

Sub-section (1)-(3). The charge should show in what way a soldier has malingered, or what disease or infirmity he has feigned or produced; or what particular injury has been committed; or of what misconduct or wilful disobedience he has been guilty. In a case under sub-section (2) evidence will have to be given of the intent, but if the act is shown to have been done wilfully and not accidentally, the intent may be presumed.

Feigning. This term means not merely that a soldier reported himself sick when he was not sick, but that he reported himself sick when he *knew* that he was not sick, and that he feigned or pretended certain symptoms which the medical officer was satisfied did not exist.

Malingering is a feigning of disease, but of a more serious nature ; implying some deceit, such as the previous application of a ligature, or of the taking of some drug, or some other act which, though it did not actually produce disease or retard a cure, yet produced the appearance of the disease said to exist.

The misconduct under sub-section (3) must be with the intent of producing or aggravating the disease, or delaying the cure, as the case may be. The involuntary production, aggravation, or prolongation of *delirium tremens* by intemperate habits, or of venereal disease by immoral conduct, does not render a soldier liable under this sub-section.

Sub-section (4). See note on s. 17.

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It is not material to whom the property belongs, so long as it is shown to belong to a comrade, officer, regimental mess, regimental band, or regimental institution. If it turns out that the property belongs to some person or persons not included in the above description, the prisoner must be acquitted, as the offence could in that case only be charged under s. 41.

If a man steals the uniform coat of his comrade, he can be charged with stealing it either as being public property or as being the property of his comrade; for although the coat is public property, yet the comrade has such special interest in it (see M.M.L., Chapter VII, para. 160) as to justify the charge of stealing the property of a comrade.

Sub-section (5). A charge under this sub-section for anything that is an offence under any previous enactment of the Act will be bad.

Of a fraudulent nature. The particulars must show that there was fraud in the act with which the prisoner is charged, amounting to a crime according to the ordinary criminal law; and any mere misappropriation of money or irregularity in accounts will not be sufficient to support a charge under this sub-section.

Disgraceful conduct. The charge must specify the details of the particular act or acts alleged to constitute the disgraceful conduct.

Drunkenness.

Drunken-
ness.

19. Every person subject to military law who commits the following offence that is to say,

The offence of drunkenness, whether on duty or not on duty,
shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned, and, either in addition to or in substitution for any other punishment, to pay a fine not exceeding one pound.

See Chapter I, paras. 25-30, and s. 46 (2), (3), and note.

Offences in relation to Prisoners.

Permitting
escape of
prisoner.

20. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) When in command of a guard, picket, patrol, or post, releases without proper authority, whether wilfully or otherwise, any prisoner committed to his charge ; or
- (2.) Wilfully or without reasonable excuse, allows to escape any prisoner who is committed to his charge, or whom it is his duty to keep or guard,

shall on conviction by court-martial be liable if he has acted wilfully to suffer penal servitude, or such less punishment as is in this Act mentioned, and in any case to suffer imprisonment or such less punishment as is in this Act mentioned.

In a charge under sub-section (1), if proof is given that the prisoner was released, the accused must show the authority under which he acted. The court may use their military knowledge with respect to whether the authority alleged was or was not sufficient.

In a charge under sub-section (2), if there is a doubt as to the prisoner having acted *wilfully*, he should be charged with having acted *without reasonable excuse*, or he may be charged with having acted wilfully, and in an alternative charge with having acted without reasonable excuse. See s. 56(5), and note.

Under sub-section (2), where an escort consisting of a corporal and a private lose their prisoner, the corporal is liable to conviction unless he can prove that the escape took place in circumstances against which he could not reasonably guard. The private would be guilty, upon proof that he shared in the wilful act or negligence of the corporal, or that the prisoner while committed to his charge during the temporary and necessary absence of the corporal was allowed to escape, unless he could show that he used all reasonable means to guard against the escape. In the latter case the corporal would not be guilty if he could show that his temporary delegation of his duty to the private was occasioned by some necessary cause, and that he took reasonable precautions for the safe custody of the prisoner during his absence.

A man commits this offence wilfully by any act or omission, the reasonable and probable consequence of which would be the escape of the prisoner committed to his charge, or whom it was his duty to guard or keep.

A man who having completed a term of imprisonment is being escorted from the prison to rejoin his regiment is not a prisoner.

Part I.
Irregular
imprison-
ment.

21. Every person subject to military law who commits any of the following offences ; that is to say,

- (1.) Unnecessarily detains a prisoner in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation ;
- (2.) Having committed a person to the custody of any officer, non-commissioned officer, provost-marshal, or assistant provost-marshal, fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost-marshal, or assistant provost-marshal, into whose custody the person is committed, an account in writing signed by himself of the offence with which the person so committed is charged ; or
- (3.) Being in command of a guard, does not, as soon as he is relieved from his guard or duty, or if he is not sooner relieved, within twenty-four hours after a prisoner is committed to his charge, give in writing to the officer to whom he may be ordered to report the prisoner's name and offence so far as known to him, and the name and rank of the officer or other person by whom he was charged, accompanied, if he has received the account above in this section mentioned, by that account,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

The prosecutor will have to prove the facts which either show or enable the court to infer that the accused could have brought the prisoner to trial or brought his case before the proper authority for

investigation. If these are proved it will lie on the accused to prove the necessity for the detention of the prisoner.

Part I.

See note to s. 45.

22. Every person subject to military law who commits *Escape from confinement.*
the following offence ; that is to say,

Being in arrest or confinement, or in prison or otherwise in lawful custody, escapes, or attempts to escape,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned ; and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

As to arrest and confinement, see Chapter II, paras. 1-17.

An escape may be either with or without force or artifice, and either with or without the consent of the custodian.

Offences in relation to Property.

23. Every person subject to military law who commits *Corrupt dealings in respect of supplies to forces.*
any of the following offences ; that is to say,

(1.) Connives at the exaction of any exorbitant price for a house or stall let to sutlers ; or

(2.) Lays any duty upon, or takes any fee or advantage in respect of, or is in any way interested in, the sale of provisions or merchandise brought into any garrison, camp, station, barrack, or place, in which he has any command or authority, or the sale or purchase of any provisions or stores for the use of any of Her Majesty's forces,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

24. Every soldier who commits any of the following *Deficiency in and injury to equipment.*
offences ; that is to say,

(1.) Makes away with, or is concerned in making away with (whether by pawning, selling, destruction or

Part I.

otherwise howsoever) his arms, ammunition, equipments, instruments, clothing, regimental necessaries, or any horse of which he has charge ;
or

- (2.) Loses by neglect anything before in this section mentioned ; or
- (3.) Makes away with (whether by pawning, selling, destruction, or otherwise howsoever) any military decoration granted to him ; or
- (4.) Wilfully injures anything before in this section mentioned or any property belonging to a comrade, or to an officer, or to any regimental mess or band, or to any regimental institution, or any public property ; or
- (5.) Ill-treats any horse used in the public service,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

As to a charge under this section, see Q.R., 1885, Sect. VI, paras. 79-83 ; Rules, First App., Note as to use of forms of charges, para. (23). As to liability of civilian pawnbroker, &c., see s. 156.

Sub-section (1). This sub-section shows clearly that, whether arms are pawned, sold, destroyed or otherwise made away with, the military offence is the same, namely, the making away with them ; but the degree of the offence may differ according as they have been pawned, sold, or destroyed, or otherwise made away with, and the punishment awarded may vary accordingly.

A charge under this or the next sub-section of making away with, &c., money or goods entrusted to the care of the soldier, or anything not mentioned in these sub-sections, as, for instance, his blankets or other barrack furniture, would be bad, though if the act amounted to stealing or embezzlement it would be punishable under s. 18, or if there was proof of any wilful act or neglect, the soldier might be charged with an offence under s. 40. Loss of bedding and blankets might be met by stoppages under the Royal Warrant relating to barrack furniture.

"Making away with" is distinct from theft, as it applies only to goods in a man's own possession, and which, therefore, he cannot in law steal. Unless there is some positive act of pawning, sale, &c.,

a charge for making away with should not be preferred. (See note to s. 17, and Q.R., 1885, Sect. VI, paras 79-80.)

"Clothing" includes clothing supplied to a man in hospital.

Sub-section (2). This is not intended to punish a soldier for a deficiency in his kit occasioned by accident or mere carelessness rather than by culpable neglect. On the other hand, the fact that a man has not got his arms, regimental necessaries, &c., at a time when it was his duty to have them, is *prima facie* evidence of his having lost them by neglect, and the court may call on him to show that the loss was not occasioned by any fault on his part.

Sub-section (3). *Military decoration*. This includes any medal, clasp, good-conduct badge, or decoration. Section 190 (18). Losing by neglect a military decoration is not an offence.

Sub-section (4). *Wilfully injures*. A charge for injuring the property here mentioned must be laid under this section, and not under section 41. The prosecutor must adduce evidence which will either prove, or enable the court to infer, that the injury was not accidental or done by some other person. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was wilful and intended to injure the arms, &c., or was mere carelessness. In the latter case no offence under this section would be committed. The regulation value will be taken (without evidence) to be the value of any article lost or damaged, which being a part of military equipment has a regulation value.

Sub-section (5). A soldier groom who ill-treats the charger kept for military purposes of a mounted infantry officer will bring himself within this sub-section. "Horse" includes mule and other beasts of burden or draught. Section 190 (40).

Offences in relation to False Documents and Statements.

25. Every person subject to military law who commits any of the following offences; that is to say

Falsifying
official documents and
false declarations.

(1.) In any report, return, muster roll, pay list, certificate, book, route, or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy—

(a.) Knowingly makes or is privy to the making of any false or fraudulent statement; or

(b.) Knowingly makes or is privy to the making of any omission with intent to defraud; or

(2.) Knowingly and with intent to defraud or to injure

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any person suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce ; or

- (3.) Where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

The court may use their military knowledge in determining any question as to the duty of the accused in a case arising under this section.

A trivial error in a report should not, in the absence of fraud or bad faith, be made the ground of a charge under sub-section (1) (a).

In a charge under sub-section (1) (b) it will not be necessary to show an intent to defraud the government or a particular individual, so long as there is shown an intent to defraud somebody. On the other hand, in a charge under sub-section (2) an intent to defraud the government will not support the charge, and it must be shown that there was an intent to defraud or injure some individual, though it is immaterial who that individual is.

A charge under sub-section (2) or (3) should show why it was the accused's duty to preserve the document or to make the declaration ; but where the situation of the accused is proved, the court may use their military knowledge to infer his duty.

Sub-section (3) does not include statements in a summary of evidence or verbal statements.

Neglect to report, and signing in blank.

26. Every person subject to military law who commits any of the following offences ; that is to say,

- (1.) When signing any document relating to pay, arms, ammunition, equipments, clothing, regimental necessities, provisions, furniture, bedding, blankets, sheets, utensils, forage, or stores, leaves in blank any material part for which his signature is a voucher ; or
- (2.) Refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Sub-section (2). The charge must show that it was the duty of the accused to make the report or return. If the report or return was one for which the superior had no right to call, there is no punishment for a refusal to make it. The neglect must be something more than mere forgetfulness or mistake.

27. Every person subject to military law who commits any of the following offences ; that is to say,

False accusation, or false statement by soldier.

- (1.) Being an officer or soldier, makes a false accusation against any other officer or soldier, knowing such accusation to be false ; or
- (2.) Being an officer or soldier, in making a complaint where he thinks himself wronged, knowingly makes any false statement affecting the character of an officer or soldier, or knowingly and wilfully suppresses any material facts ; or
- (3.) Being a soldier, falsely states to his commanding officer that he has been guilty of desertion or of fraudulent enlistment, or of desertion from the Navy, or has served in and been discharged from any portion of the regular forces, reserve forces, or auxiliary forces, or the Navy ; or
- (4.) Being a soldier, makes a wilfully false statement to any military officer or justice in respect of the prolongation of furlough,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

Sub-section (1). A mere false statement, not involving an accusation, is not within this sub-section.

Sub-section (3). *To his commanding officer.* It is not enough for the statement to be made merely to a superior officer ; but the term "commanding officer" will include any one whose duty it would be under the Queen's Regulations or according to the custom

Part I

of the service to deal with a charge of desertion or fraudulent enlistment, if it were made against the soldier. A written statement made to any person for the purpose of being laid before the commanding officer is a statement to the commanding officer.

Sub-section (4). *Prolongation of furlough.* A justice has power under s. 173 to extend furloughs in certain cases for a month.

Offences in relation to Courts-Martial.

Offences in
relation to
courts-
martial.

28. Every person subject to military law who commits any of the following offences ; that is to say,

- (1.) Being duly summoned or ordered to attend as a witness before a court-martial, makes default in attending ; or
- (2.) Refuses to take an oath or make a solemn declaration legally required by a court-martial to be taken or made ; or
- (3.) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him ; or
- (4.) Refuses, when a witness, to answer any question to which a court-martial may legally require an answer ; or
- (5.) Is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court,

shall on conviction by a court-martial other than the court in relation to or before whom the offence was committed be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned :

Provided that where a person subject to military law is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court, that court, if

they think it expedient, instead of the offender being tried by another court-martial, may by order under the hand of the president commit such offender to prison, there to be imprisoned, with or without hard labour, for a period not exceeding twenty-one days.

See generally as to summoning and attendance of witnesses, Rules 14, 74-77.

An offence under this section is not triable by the court in relation to or before whom it was committed, except that for contempt of court by a person subject to military law, the court may imprison him for not more than 21 days. (See Rule 58, note.)

As a rule courts should accept an apology sufficient to vindicate their dignity without resorting to the extreme measure of imprisonment.

Civilians guilty of the offences mentioned in this section are punishable by a civil court under s. 126.

Sub-section (1). The court is formed when the members are assembled, even before they are sworn, and anything which would be a contempt after the court was sworn, would be a contempt once the members are assembled.

Sub-section (5). The interruption or disturbance need not be caused within the precincts of the court itself, if the circumstances are such as to constitute a contempt of court.

Proviso. The enactments of s. 47 (5) and s. 48 (6) which prohibit a regimental or district court from trying an officer, would not exempt an officer guilty of contempt of such a court from liability to be committed to prison by the court under the proviso; but the correct course for the court would almost invariably be to adjourn and report to the proper authority. The summary proceeding for contempt is not a trial, and the offence being as a rule committed in view of the court, opportunity should be given to the offender to offer any explanation of or excuse for his conduct, but no further inquiry will be necessary. The order of the court does not require confirmation.

To imprison for contempt of court a prisoner who is under trial, though legal, requires very exceptional circumstances to justify it; his imprisonment must immediately follow his contempt, and cannot be an addition to his sentence after conviction, or be ordered to commence at the date of the expiration of the imprisonment under the sentence. The court must adjourn until the end of the imprisonment.

Part I.

False
evidence.

29. Every person subject to military law who commits the following offence : that is to say,

When examined on oath or solemn declaration before a court-martial, or any court or officer authorised by this Act to administer an oath, wilfully gives false evidence,

shall be liable on conviction by court-martial to suffer imprisonment, or such less punishment as is in this Act mentioned.

Accidental or trifling mistakes or discrepancies in evidence will not be made the subject of a charge under this section.

The production of the proceedings of the court-martial before which the false swearing is alleged to have taken place is not enough to prove that the accused swore as charged. The member of the court who recorded the proceedings, or some person from personal knowledge must prove this. The evidence of one witness without corroboration in some material respect is not sufficient to prove the falsehood of the matter sworn. (See M.M.L., Ch. VII, para. 270.)

Offences in relation to Billeting.

Offences in
relation to
billeting.

30. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to billeting); that is to say,

- (1.) Is guilty of any ill-treatment, by violence, extortion, or making disturbances in billets, of the occupier of a house in which any person or horse is billeted; or
- (2.) Being an officer, refuses or neglects, on complaint and proof of such ill-treatment by any officer or soldier under his command, to cause compensation to be made for the same; or
- (3.) Fails to comply with the provisions of this Act with respect to the payment of the just demands of the person on whom he or any officer or soldier under his command, or his or their horses, have been billeted, or to the making up

and transmitting of an account of the money due to such person ; or

- (4.) Wilfully demands billets which are not actually required for some person or horse entitled to be billeted ; or
- (5.) Takes or knowingly suffers to be taken from any person any money or reward for excusing or relieving any person from his liability in respect of the billeting or quartering of officers, soldiers, or horses, or any part of such liability ; or
- (6.) Uses or offers any menace to or compulsion on a constable or other civil officer to make him give billets contrary to this Act, or tending to deter or discourage him from performing any part of his duty under the provisions of this Act relating to billeting, or tending to induce him to do anything contrary to his said duty ; or
- (7.) Uses or offers any menace to or compulsion on any person tending to oblige him to receive, without his consent, any person or horse not duly billeted upon him in pursuance of the provisions of this Act relating to billeting, or to furnish any accommodation which he is not thereby required to furnish,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

The provisions as to the billeting of officers and soldiers are contained in Part III, ss. 102-111, and ss. 119-121.

See s. 111 as to the jurisdiction of magistrates to deal with officers or soldiers guilty of offences under this section.

(4.) *Wilfully demands.* The demand constitutes the offence, and it is immaterial whether the billet is actually obtained or not.

Part I.

Offences in relation to Impressment of Carriages.

Offences in
relation to
the impress-
ment of
carriages,
and their
attendants.

31. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to the impressment of carriages); that is to say,

- (1.) Wilfully demands any carriages, animals, or vessels which are not actually required for the purposes authorised by this Act; or
- (2.) Fails to comply with the provisions of this Act relating to the impressment of carriages as regards the payment of sums due for carriages or as regards the weighing of the load; or
- (3.) Constrains any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages, to travel against the will of the person in charge thereof beyond the proper distance, or to carry against the will of such person any greater weight than he is required by the said provisions to carry; or
- (4.) Does not discharge as speedily as practicable any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages; or
- (5.) Compels the person in charge of any such carriage, animal, or vessel, or permits him to be compelled to take thereon any baggage or stores not entitled to be carried, or, except where the carriage or animal is furnished upon a requisition of emergency, to take thereon any soldier or servant (except such as are sick), or any woman or person; or
- (6.) Ill-treats or permits such person in charge to be ill-treated; or
- (7.) Uses or offers any menace to or compulsion on a constable to make him provide any carriage,

animal, or vessel which he is not bound in pursuance of the provisions of this Act relating to the impressment of carriages to provide, or tending to deter or discourage him from performing any part of his duty in relation to the providing of carriages, animals, or vessels, or tending to induce him to do anything contrary to his said duty ; or

(8.) Forces any carriage, animal, or vessel from the owner thereof,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

The provisions as to the impressment of carriages are contained in Part III, ss. 112-121.

As to the jurisdiction of magistrates to deal with officers and soldiers guilty of these offences, see s. 118.

Offences in relation to Enlistment.

32. (1.) Every person having become subject to military law, who is discovered to have committed the following offence ; that is to say,

Enlistment of soldier or sailor discharged with ignominy or disgrace.

Having been discharged with disgrace from any part of Her Majesty's forces, or having been dismissed with disgrace from the Navy, has afterwards enlisted in the regular forces without declaring the circumstances of his discharge or dismissal,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

(2.) For the purpose of this section, the expression "discharged with disgrace from any part of Her Majesty's forces" means discharged with ignominy, discharged as incorrigible and worthless,

Part I. or discharged on account of conviction for felony
or of a sentence of penal servitude.

Having become subject, i.e., having signed the declaration and oath, s. 80 (4) (a) (b). The wording in this and the next section is different from that in other sections ("every person subject, &c., who commits," &c.), because at the moment of committing the offence the man is not actually subject to military law.

Enlisted. The original attestation paper or one of the duplicates must be produced at the trial.

It is held that the non-declaration is *prima facie* proved by the attestation paper so produced showing answers to have been given inconsistent with such declaration.

A man who can show that when discharged he was not (from not having had a discharge certificate given him or for any other reason) made acquainted with the fact that his discharge was for one of the reasons constituting disgrace, ought not to be convicted under this section.

False
answers or
declarations
on enlist-
ment.

33. Every person having become subject to military law who is discovered to have committed the following offence ; that is to say,

To have made a wilfully false answer to any question set forth in the attestation paper which has been put to him by or by direction of the justice before whom he appears for the purpose of being attested,

shall on conviction by court-martial be liable to suffer imprisonment or such less punishment as is in this Act mentioned.

Having become subject. See note to the preceding section.

Attestation paper. The original or one of the duplicates must be produced at the trial.

The answer must be wilfully false ; thus where a man might reasonably have been mistaken as to the fact of his having "served," where, for instance, he was discharged as unfit before he had done duty or worn a uniform, a conviction would not hold good.

General
offences in
relation to
enlistment.

34. Every person subject to military law who commits any of the following offences ; that is to say,

(1.) Is concerned in the enlistment for service in the

regular forces of any man when he knows or has reasonable cause to believe such man to be so circumstanced that by enlisting he commits an offence against this Act; or

(2.) Wilfully contravenes any enactments or the regulations of the service in any matter relating to the enlistment or attestation of soldiers of the regular forces,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

So circumstanced, i.e., discharged with disgrace, so that he commits an offence under s. 32; or, belonging to the regular forces or otherwise, so that he is guilty of fraudulent enlistment under s. 13, and of making a false answer under s. 33.

A recruiter who counsels or connives at an offence against s. 23 on the part of a recruit falls within sub-section (1), as the attestation is part of the process of enlistment.

Miscellaneous Military Offences.

35. Every person subject to military law who commits the following offence, that is to say, Traitorous words.

Uses traitorous or disloyal words regarding the Sovereign,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

The words used are to be set out in the charge; they may be either spoken or written or published. It is not intended that mere violent or vulgar language used by a man under the influence of liquor should be punished under this section.

36. Every person subject to military law who commits the following offence; that is to say, Injurious disclosures.

Whether serving with any of Her Majesty's forces or not, without due authority either verbally or in

Part I.

writing, or by signal or otherwise, discloses the numbers or position of any forces, or any magazines or stores thereof, or any preparations for, or orders relating to, operations or movements of any forces, at such time and in such manner as in the opinion of the court to have produced effects injurious to Her Majesty's service,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

The unauthorised communication of intelligence to the enemy on active service is punishable under s. 5 (4).

A charge under this section must show how and when effects injurious to Her Majesty's service were produced.

As to injurious disclosures by private letters, see note to s. 4. (See also Q.R., 1885, Sect. VI, para. 11.)

**Ill-treating
soldier.**

37. Every officer or non-commissioned officer who commits any of the following offences ; that is to say,

- (1.) Strikes or otherwise ill-treats any soldier ; or
- (2.) Having received the pay of any officer or soldier, unlawfully detains or unlawfully refuses to pay the same when due,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a non-commissioned officer, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Sub-section (1). Forcing or striking a soldier when acting as sentinel is punishable under s. 6 (1) (d) more severely than the mere striking a soldier.

As the word "soldier" includes non-commissioned officer, it follows that the offence of one non-commissioned officer striking or ill-treating another falls within this section.

**Duelling and
attempting
to commit
suicide.**

38. Every person subject to military law who commits any of the following offences ; that is to say,

(1.) Fights, or promotes or is concerned in or connives at fighting, a duel ; or

(2.) Attempts to commit suicide,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

An officer carrying a challenge is punishable under sub-section (1).

If death ensued, the surviving principal in the duel and both the seconds might be tried and convicted for murder.

39. Every person subject to military law who commits any of the following offences ; that is to say,

Refusal to deliver to civil power officers and soldiers accused of civil offences.

On application being made to him neglects or refuses to deliver over to the civil magistrate or to assist in the lawful apprehension of, any officer or soldier accused of an offence punishable by a civil court,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

This offence may be committed not only in the United Kingdom, but in any colony or possession where there is a civilian judicature. An officer or soldier to whom an application is made under this section may require to see the warrant or other authority for the delivery over or apprehension; and if none exists, no offence is committed by refusing the demand.

40. Every person subject to military law who commits any of the following offences ; that is to say,

Conduct to prejudice of military discipline.

Is guilty of any act, conduct, disorder, or neglect, to the prejudice of good order and military discipline,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in

Part I. this Act mentioned, and if a soldier to suffer imprisonment, or such less punishment as is in this Act mentioned. Provided that no person shall be charged under this section in respect of any offence for which special provision is made in any other part of this Act, and which is not a civil offence; nevertheless the conviction of a person so charged shall not be invalid by reason only of the charge being in contravention of this proviso, unless it appears that injustice has been done to the person charged by reason of such contravention; but the responsibility of any officer for that contravention shall not be removed by the validity of the conviction.

See Chapter I, para. 32.

To sustain a charge under this section it is absolutely necessary that the charge should recite the words of the Act. That is to say, there must be charged an "act," or "conduct," or "disorder," or "neglect," as the case may be, "to the prejudice of good order and military discipline."

But the mere use of these words as a description of certain conduct does not warrant a court in assuming that such conduct is legally an offence. A court is not warranted in convicting unless of opinion that the conduct charged (1) was committed by the prisoner, and (2) was to the prejudice both of good order and of military discipline, having regard to the conduct itself and to the circumstances in which it took place. It is only in this latter case that an offence of a non-military character falls within this section. An offence which if committed by a civilian would be a criminal offence should be tried under s. 41.

A neglect must be wilful or culpable, and not merely arising from ordinary forgetfulness or error of judgment or inadvertence; and where the use of certain words regarding superiors is made the subject of a charge under this section, the words must have been said meaningly, i.e., with a guilty intent.

Attempts to commit most of the purely military offences under the Act, where such attempts are not specifically provided for (e.g., an attempt to desert), are triable under this section.

Offences punishable by ordinary Law.

Offences
punishable
by ordinary
law of
England.

41. Subject to such regulations for the purpose of preventing interference with the jurisdiction of the civil courts as are in this Act after mentioned, every person

who, whilst he is subject to military law, shall commit any of the offences in this section mentioned, shall be deemed to be guilty of an offence against military law, and if charged under this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by court-martial, and on conviction to be punished as follows ; that is to say,

- (1.) If he is convicted of treason, be liable to suffer death, or such less punishment as is in this Act mentioned ; and
- (2.) If he is convicted of murder, be liable to suffer death ; and
- (3.) If he is convicted of manslaughter or treason-felony, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned ; and
- (4.) If he is convicted of rape, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned ; and
- (5.) If he is convicted of any offence not before in this section particularly specified, which when committed in England is punishable by the law of England, be liable whether the offence is committed in England or elsewhere, either to suffer such punishment as might be awarded to him in pursuance of this Act in respect of an act to the prejudice of good order and military discipline, or to suffer any punishment assigned for such offence by the law of England.

Provided as follows :—

- (a.) A person subject to military law shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape committed in the United Kingdom, and shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape committed in any place within Her Majesty's dominions, other than the

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United Kingdom and Gibraltar, unless such person at the time he committed the offence was on active service, or such place is more than one hundred miles as measured in a straight line from any city or town in which the offender can be tried for such offence by a competent civil court :

- (b.) A person subject to military law when in Her Majesty's dominions may be tried by any competent civil court for any offence for which he would be triable if he were not subject to military law.

Subject to such regulations, &c. See provisos (a) and (b).

This section in effect gives absolute jurisdiction to a court-martial to try any civil offence, with five exceptions, namely, treason, murder, manslaughter, treason-felony, and rape. But even these offences a court-martial may try, if committed out of the Queen's dominions, or in Gibraltar, or if committed within the Queen's dominions, either when on active service, or in a place more than one hundred miles from any city or town in which the offender can be tried for such offence by a competent civil court.

See as to these civil offences, M.M.L., Chapter VII; and for definition of active service, see s. 189.

Where a civil offence is specified in the Act (e.g., ss. 17, 18), an attempt to commit that offence can under (5) be ordinarily tried by court-martial, because by English law an attempt to commit a civil offence is ordinarily in itself an offence.

Redress of Wrongs.

Mode of
complaint by
officer.

42. If an officer thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, he may complain to the Commander-in-Chief in order to obtain justice, who is hereby required to examine into such complaint, and through a Secretary of State make his report to Her Majesty in order to receive the directions of Her Majesty thereon.

It is the custom of the service to forward every complaint

through the officer commanding the regiment; and an officer would not be justified in deviating from this course, unless the commanding officer should refuse, or unreasonably delay, to forward it. An officer, on addressing himself directly to the general in command, should apprise his commanding officer of his doing so, and must observe in the channel of approach to the Commander-in-Chief each intermediate gradation, as the general of brigade or division.

Although the Commander-in-Chief is required to examine into the complaint and report to Her Majesty, he is not debarred from expressing his own view of the case. Even an expression of opinion by the intermediate general officer will in many cases suffice to render further steps unnecessary. An officer should not be disposed to push to extremes his right to bring his complaint before the Sovereign. The report to Her Majesty is to be made through the Secretary of State, the constitutional adviser of the Crown.

An officer of Her Majesty's Indian forces may complain to the Commander-in-Chief in the Presidency to which the officer belongs. See s. 180 (2), (d).

A false accusation or statement made on preferring a complaint under this section is punishable under s. 27 (1), (2).

43. If any soldier thinks himself wronged in any matter by any officer other than his captain, or by any soldier, he may complain thereof to his captain, and if he thinks himself wronged by his captain, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer, and if he thinks himself wronged by his commanding officer either in respect of his complaint not being redressed, or in respect of any other matter, he may complain thereof to the general or other officer commanding the district or station where the soldier is serving; and every officer to whom a complaint is made in pursuance of this section shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take such steps as may be necessary for giving full redress to the complainant in respect of the matter complained of.

Mode of
complaint by
soldier.

The mode of preferring a complaint is set forth in the form in the soldier's personal account book. Complaints may be made

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respecting any matter, but can be made by an individual only. The combined complaint of several can never be permissible, but should not, if well founded, be treated as mutinous, where it is plain that the only object of those making the complaint is to procure redress of the matters by which they think themselves wronged. A complaint cannot be legitimately preferred to a superior officer except in the regular course defined by this section,—that is to say, first to the captain and then to the commanding officer. It is only where the captain refuses or unnecessarily delays to redress or forward the complaint, that a direct application can be made to the commanding officer; and it is only if the commanding officer similarly refuses or delays that a direct application can be made to the general or other officer commanding the district or station. The captain, in the one case, and the commanding officer in the other, ought to be informed of the application being made to his superior.

The commanding officer to whom the complaint is made will usually be the commanding officer as defined in Rule 128; but if the complaint is made to any other officer, that officer should receive it and should at once forward it to the commanding officer of the complaining soldier as defined by that Rule, and the complaint will then be dealt with as properly made.

The only exception to the above rule as to the course of complaints, is on occasion of the question which general officers at their yearly inspections are required to put to regiments, as to whether there are any complaints. (See Q.R., 1885, Sect. V, para. 46.)

A soldier cannot in any way be punished for making a complaint under this section, whether it be frivolous or not, and he ought not, for making a complaint, to be treated in any way with harshness or suspicion.

A false accusation or statement made on preferring a complaint under this section is punishable under s. 27 (1), (2).

Punishments.

Scale of
punishments
by courts-
martial.

44. Punishments may be inflicted in respect of offences committed by persons subject to military law and convicted by courts-martial,—

In the case of officers, according to the scale following :

a. Death.

b. Penal servitude for a term not less than five years.

c. Imprisonment, with or without hard labour, for a term not exceeding two years.

- d. Cashiering.
- e. Dismissal from Her Majesty's service.
- f. Forfeiture in the prescribed manner of seniority of rank, either in the army or in the corps to which the offender belongs, or in both.
- g. Reprimand, or severe reprimand.

In the case of soldiers, according to the scale following:

- h. Death.
- j. Penal servitude for a term not less than five years
- k. Imprisonment, with or without hard labour, for a term not exceeding two years.
- l. Discharge with ignominy from Her Majesty's service.
- m. Reduction in the case of a non-commissioned officer to a lower grade, or to the ranks.
- n. Forfeitures, fines, and stoppages.

Provided that—

- (1.) Where in respect of any offence under this Act there is specified a particular punishment, or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence, instead of such particular punishment (but subject to the other regulations of this Act as to punishments, and regard being had to the nature and degree of the offence) any one punishment lower in the above scales than the particular punishment.
- (2.) An officer shall be sentenced to be cashiered before he is sentenced to penal servitude or imprisonment.
- (3.) An officer when sentenced to forfeiture of seniority of rank may also be sentenced to reprimand or severe reprimand.
- (4.) A soldier when sentenced to penal servitude or

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—

imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from Her Majesty's service.

- (5.) Where a soldier on active service is guilty of an aggravated offence of drunkenness, or of an offence of disgraceful conduct, or of any offence punishable with death or penal servitude, it shall be lawful for a court-martial to award for that offence such summary punishment other than flogging as may be directed by rules to be made from time to time by a Secretary of State ; and such summary punishment shall be of the character of personal restraint or of hard labour, but shall not be of a nature to cause injury to life or limb, and shall not be inflicted where the confirming officer is of opinion that imprisonment can with due regard to the public service be carried into execution.
- (6.) The said summary punishment shall not be inflicted upon a non-commissioned officer, or upon a reduced non-commissioned officer, for any offence committed while holding the rank of non-commissioned officer.
- (7.) "An aggravated offence of drunkenness" for the purposes of this section means drunkenness committed on the march or otherwise on duty, or after the offender was warned for duty, or when by reason of the drunkenness the offender was found unfit for duty ; and notwithstanding anything in this Act it shall not be incumbent on the commanding officer to deal summarily with such aggravated offence of drunkenness.
- [(8.) "An offence of disgraceful conduct" for the purposes of this section means any offence specified in section eighteen of this Act.
- (9.) All rules with respect to summary punishment

made in pursuance of this section shall be laid Part I. , before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.

- (10.) For the purpose of commutation of punishment the summary punishment above mentioned shall be deemed to stand in the scale of punishments next below imprisonment.
- (11.) In addition to or without any other punishment in respect of any offence, an offender convicted by court-martial may be subjected to forfeiture of any deferred pay, service towards pension, military decoration or military reward, in such manner as may for the time being be provided by Royal Warrant, but shall not, save as may be provided by Royal Warrant, be liable to any forfeiture under the Regimental Debts Act, 1863, ^{26 & 27 Vict c. 57.} or under any Act relating to the military savings banks, or any regulations made in pursuance of either of the above-mentioned Acts.
- (12.) In addition to or without any other punishment in respect of any offence, an offender may be sentenced by court-martial to any deduction authorised by this Act to be made from his ordinary pay.
- (13.) No officer or non-commissioned officer shall, under or by virtue of any power or authority derived from any foreign potentate or ruler, inflict, or cause to be inflicted, on any person subject to military law under this Act, for or in respect of any offence against such law, any punishment not authorised by this Act.

As to the principle of affixing to each offence a maximum punishment, instead of, as formerly, "such punishment as a general or other court-martial may award," see Ch. I, para. 35.

(A.M.L.)

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b. Penal Servitude. See as to the execution of a sentence of penal servitude, sections 58-62, and sections 68, 131, and notes.

c. Imprisonment. As to rules for awarding terms of imprisonment in days, months, or years as the case may require, see Q.R., 1885, Sect. VI, para. 101. As to execution of a sentence, see ss. 63-67, 131-135, and notes; and as to duration of sentence, see s. 68.

A prisoner sentenced to imprisonment without hard labour is, in England, obliged by prison rules to do some labour, unless directed to be imprisoned as a first-class misdemeanant, in which case he is allowed to receive visits, and has other privileges.

A soldier sentenced to six months' imprisonment is liable in commutation thereof either wholly or partly to general service and to transfer to any corps. Section 83 (7).

An offender does not cease to be subject to the Act while undergoing a sentence of penal servitude or imprisonment, though he has been discharged or dismissed from the service. S. 158 (2).

f. Forfeiture . . . of seniority of rank. See Rule 46.

g. Reprimand or severe reprimand. Reprimands vary from a public and severe reprimand to a private reprimand or admonition. A public reprimand may be administered at the head of a regiment, brigade, or division, paraded for the purpose; or it may be conveyed in general orders. A private reprimand is usually given by the commanding officer of a regiment or brigade, at his quarters, in the presence of the officers of the regiment, or of the officers of equal and superior rank only, or simply in the presence of a staff officer. The manner and time of delivering the reprimand is appointed by the confirming authority.

For the additional punishment of deduction from pay, see proviso (12) and section 137.

m. Reduction. Service in the lower grade or as a private soldier will reckon from the date of signing the original sentence, whether the original sentence was reduction, or whether reduction was a revised sentence, or a mitigation by the confirming officer from a more severe sentence.

n. Forfeitures. i.e. forfeitures of service towards discharge, see sections 73, 79 (2), 84, 161 (which, however, are consequential and cannot be awarded by sentence of court-martial), and the forfeitures mentioned in provisos (11) and (12), which include forfeiture of good conduct badges and medals with the pay or money attached thereto, and can usually be awarded by court-martial, but under the Royal Warrant cannot be awarded by a regimental court-martial. They may be more severe than a short imprisonment.

As to restoration of forfeited service, see s. 79 (2) *ad fin.*

Fines. These are not authorised to be imposed for any

except drunkenness, and cannot exceed, if imposed by a court-martial, one pound, or if imposed by a commanding officer, ten shillings.

Stoppages. See proviso (12). Section 138 sets out the cases in which penal deductions or stoppages may be made from the ordinary pay of the soldier: and section 139 provides for their remission.

Provisos.

(1.) *Any one punishment.* The three next provisos, and (11) and (12) specify the particular instances in which more than one punishment may be given.

(2.) Care must be taken to comply with this provision; a sentence to penal servitude *and* to be cashiered is incorrect.

(3.) For definition of active service, see section 189.

(5.) This summary punishment must not be confused with the punishments awarded summarily by the commanding officer.

For Rules for summary punishment see p. 551.

Death, or penal servitude, or imprisonment, but no other punishment, can be commuted into summary punishment.

The following conditions are essential to the legality of summary punishments:

- (1.) The offender must be on active service, and when he committed the offence a soldier other than a warrant or non-commissioned officer.
- (2.) He must have been guilty of an offence punishable with death or penal servitude, or of an aggravated offence of drunkenness, or of an offence of disgraceful conduct.
- (3.) The punishment must be in conformity with the Rules made by the Secretary of State, see p. 551.
- (4.) The confirming officer must be of opinion that imprisonment cannot, with due regard to the public service, be carried into execution.

As to aggravated offence of drunkenness, see sub-section (7).

The offence of disgraceful conduct means any offence specified in s. 18: see sub-section (8).

The offences punishable with death are in sections 4, 6 (1), 7, 8 (1), 9 (1), 12 (1), and 41.

The offences punishable with penal servitude are in sections 5, 8 (2), 9 (2), 13 (1), 17, 20, and 41.

(11.) As to these forfeitures, see Royal Warrant, Parts I and II, Pay and Non-effective Pay.

(12.) As to these deductions see section 137 (officer); and section 138 (soldier).

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ARREST AND TRIAL.

Arrest

Custody of persons charged with offences. 45. The following regulations shall be enacted with respect to persons subject to military law when charged with offences punishable under this Act :

- (1.) Every person subject to military law when so charged may be taken into military custody :
Provided, that in every case where any officer or soldier not on active service remains in such military custody for a longer period than eight days without a court-martial for his trial being ordered to assemble, a special report of the necessity for further delay shall be made by his commanding officer in manner prescribed ; and a similar report shall be forwarded every eight days until a court-martial is assembled or the officer or soldier is released from custody ;
- (2.) Military custody means, according to the usages of the service, the putting the offender under arrest or the putting him in confinement :
- (3.) An officer may order into military custody an officer of inferior rank or any soldier, and any non-commissioned officer may order into military custody any soldier, and an officer may order into military custody any officer (though he be of higher rank) engaged in a quarrel, fray, or disorder ; and any such order shall be obeyed, notwithstanding the person giving the order and the person in respect of whom the order is given do not belong to the same corps, arm, or branch of the service :
- (4.) An officer or non-commissioned officer commanding a guard or a provost-marshal or assistant provost-marshal shall not refuse to receive or keep any person who is committed to his custody by any

officer or non-commissioned officer, but it shall be the duty of the officer or non-commissioned officer who commits any person into custody to deliver at the time of such committal, or as soon as practicable, and in every case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost-marshal, or assistant provost-marshal into whose custody the person is committed, an account in writing, signed by himself of the offence with which the person so committed is charged :

- (5.) The charge made against every person taken into military custody shall without unnecessary delay be investigated by the proper military authority and, as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody.

It will be convenient to give a summary of the provisions for preventing a person from being kept in custody without his case being dealt with by the proper authority.

An officer or non-commissioned officer who commits a person into custody should sign and deliver to the officer or non-commissioned officer into whose custody such person is committed, a written account (termed "the crime") of the offence with which the person so committed is charged. He should, if possible, do this at the time of committal, but at any rate must do so within 24 hours after that time. See ss. 21 (2), 45 (4). If the "crime" is not delivered at the time of committal, a verbal report to the same effect is to be made (Q.R., 1885, Sect. VI, para. 16), but non-delivery of the "crime" will not excuse a refusal to receive an offender into custody. The officer or non-commissioned officer into whose custody the prisoner is committed, must report in writing the prisoner's name and offence, as far as known to him, and the name and rank of the person by whom he is charged (s. 21 (3)). This report must be made as soon as he is relieved from his guard or duty, if relieved within 24 hours after the committal, and in any case within those 24 hours. It must be accompanied by the "crime," if he has received it; and should be made by an entry in the guard report, and he should send the "crime" to the commanding officer of the prisoner. (Q.R., 1885, Sect. VI, para. 16). If he has not received the "crime," he must mention the circum-

Part I. stance in his report; and if the "crime" is not delivered within the 24 hours, the commander of the guard must make a further report to the superior authority, who should at the expiration of 48 hours from the time of the committal order the prisoner to be released. (Q.R., 1885, Sect. VI, para. 16.) A commanding officer who has received the report of the committal of a prisoner, becomes responsible (s. 45 (5)) for having the case investigated without delay. This delay, under Rule 2, is not to exceed 48 hours, exclusive of Sunday, Good Friday, and Christmas Day, without the case being reported to the general or other officer commanding the district.

If eight days elapse without the case being disposed of summarily and without a court-martial being ordered to assemble, the special report required by section 45 (1), as explained by Rule 1, must be made, and a similar report is required to be forwarded every eight days; and this report will have to be sent by the commanding officer, even though the fault of the delay lies with the general. This special report is not required on active service. If unnecessary delay occurs in convening a general or district court-martial, a report has to be made to the Commander-in-Chief (Rule 17 (C)).

When an officer is placed in arrest by his commanding officer, the commanding officer should immediately report the case to the general or other officer commanding the district or station.

With reference to the above observations, it must be recollected that in reckoning the time fixed by the Rules, Sunday, Good Friday, and Christmas Day are excluded (Rule 134 (A)), but this is not the case in reckoning the days fixed by sections of the Act, e.g. ss. 21, 45 (1).

Sub-section (1). See generally as to Arrest and Confinement, Chapter II, paras. 1—17; and Q.R., 1885, Sect. VI, paras. 16—31.

Special report. See Rule 1.

Sub-section (2). *Military custody.* This expression is here restricted by the opening words of the section to the military custody of persons charged with offences, and does not apply to persons in military custody undergoing sentence. See Q.R., 1885, Sect. VI, paras. 18, 25.

Sub-section (5). *Investigated.* Although the investigation need not be conducted by the commanding officer, the commanding officer must give the decision under s. 46 (1).

The commanding officer in this section means the commanding officer as defined by Rule 128; see Q.R., 1885, Sect. VI, para. 12.

As to the conduct of the investigation, see Chapter II, paras. 18—30; Rules 2 to 8, and notes. Q.R., 1885, Sect. VI, paras. 32—40.

Power of Commanding Officer.

Part I.

46. (1.) The commanding officer shall, upon an investigation being had of a charge made against a person subject to military law under his command of having committed an offence under this Act, dismiss the charge if he in his discretion thinks that it ought not to be proceeded with; but where he thinks the charge ought to be proceeded with he may take steps for bringing the offender to a court-martial, or in the case of a soldier may deal with the case summarily.

Power of
commanding
officer.

(2.) Where he deals with a case summarily, he may,—

(a.) Award to the offender imprisonment, with or without hard labour, for any period not exceeding seven days; and

(b.) In the case of the offence of drunkenness, may order the offender to pay a fine not exceeding ten shillings, either in addition to or without imprisonment with or without hard labour; and

(c.) In addition to or without any other punishment, may order the offender to suffer any deduction from his ordinary pay authorised by this Act to be made by the commanding officer.

(3.) Where the charge is against a soldier for drunkenness not on duty, and it is not an aggravated offence of drunkenness within the meaning of section forty-four of this Act, the commanding officer shall deal with the case summarily, unless the soldier has been guilty of drunkenness on not less than four occasions in the preceding twelve months, but nothing in this sub-section shall affect the jurisdiction of any court-martial.

(4.) In the case of absence without leave, the commanding officer may award imprisonment, with or without hard labour, for any period not exceeding twenty-one days.

(5.) Provided that where imprisonment is awarded for

Part I. absence without leave, the commanding officer shall have regard to the number of days during which the offender has been absent, and in no case shall the term of imprisonment awarded, if exceeding seven days, exceed the term of absence.

(6.) Provided that in every case where the power of summary award by a commanding officer exceeds a sentence of seven days' imprisonment, the accused person may demand that the evidence against him should be taken on oath, and the same oath or solemn declaration as that required to be taken by witnesses before a court-martial shall be administered to each witness in such case.

(7.) An offender shall not be liable to be tried by court-martial for any offence which has been dealt with summarily by his commanding officer, and shall not be liable to be punished by his commanding officer for any offence of which he has been acquitted or convicted by a competent civil court or by court-martial.

(8.) A soldier ordered by his commanding officer to suffer imprisonment or pay a fine, or to suffer any deduction from his ordinary pay, shall, if he so request, have a right to be tried by a district court-martial instead of submitting to such imprisonment, fine, or deduction.

(9.) Nothing in this section shall prejudice the power of a commanding officer to award such minor punishments as he is for the time being authorised to award, so, however, that a minor punishment shall not be awarded for any offence for which imprisonment exceeding seven days is awarded.

See Chapter II, paras. 31—38; Rules 2—7, and notes. As to meaning of *Commanding Officer*, see Rule 128, and note; Q.R., 1885, Sect. IV, para. 12.

The discretion of a commanding officer in acting under this section is regulated by Q.R., 1885, Sect. VI, paras. 35—40, and the general commanding may, within one year of the award, order him to cancel or mitigate a summary punishment. After the expiration of a year, the general must refer any case deserving of consideration to the Commander-in-Chief. (*Ib.*, para. 50.)

Sub-section (1). *In the case of a soldier.* "Soldier" includes non-commissioned officer, and "non-commissioned officer" includes acting non-commissioned officer whether in receipt of pay as such or not, s. 190. But the obligation on a commanding officer to deal summarily with a soldier charged with drunkenness does not apply to a non-commissioned officer, s. 183 (1); and the Q.R., 1885 (Sect. VI, para. 44) forbid non-commissioned officers (including acting non-commissioned officers) to be subjected to summary punishment, but the Act does not forbid it except in the case of imprisonment, and a non-commissioned officer may be dealt with summarily and reprimanded.

The Act does not give a commanding officer power to punish summarily a warrant officer (see s. 182 (1)), or a person subject to military law who does not belong to Her Majesty's forces, s. 184.

Sub-section (2). *Imprisonment.* The imprisonment awarded by a commanding officer of less than seven days will be awarded in hours (Rule 6), and will as a rule be undergone in a provost prison. For form of commitment, see Rules, App. III, Form F, and as to provost prisons generally, Q.R., 1885, Sect. VI, paras. 207—231. As to commencement of term of imprisonment, see Rule 6. As a commanding officer cannot reduce a non-commissioned officer, he cannot sentence him to imprisonment, see s. 183.

(b.) For scale of fines for drunkenness, mode of recovery, &c., see Q.R., 1885, Sect. VI, paras. 56—59.

Deduction from ordinary pay. See ss. 138, 139, and definition of "day" in s. 140, and notes to those sections.

Sub-section (3). In certain cases of drunkenness a commanding officer *must* deal with them summarily, but he *may*, if he thinks fit, deal summarily with any case of drunkenness, though it is an aggravated offence or committed after four previous convictions. See above note to sub-section (1). Should, however, the number of cases of drunkenness recorded against a soldier within twelve months amount to eight, the offender should as a rule be tried, Q.R., 1885, Sect. VI, para. 52.

Sub-section (4). *Absence.* See Ch. II, para. 33, and note to s. 138.

Sub-section (6). The only case to which this applies is that of a charge for absence without leave exceeding seven days.

Should be taken on oath. See Rule 3 (B).

Sub-section (7). *Dealt with summarily.* If a commanding officer, contrary to the Q.R., 1885 (Sect. VI, para. 35) which requires him to refer to superior authority certain offences, but through inadvertence and with a full knowledge of the facts, deals with any offence summarily, the offender cannot be tried by court-martial for that offence.

Part I. *Acquitted or convicted by a civil court or a court-martial.* See note to s. 157. Nor can a man acquitted or convicted of an offence by a civil court or court-martial, be tried by court-martial for the same offence; ss. 157, 162 (6). Where a soldier has been acquitted or convicted or summarily punished for an offence which is substantially the same as some other offence, he ought not to be summarily punished by his commanding officer or tried for such other offence. If, *e.g.*, he has been acquitted or convicted of or summarily punished for absence without leave, and the absence amounted to desertion, he cannot be afterwards tried for desertion. Nor can a man convicted by court-martial of an offence be afterwards sentenced by his commanding officer to stoppages for damage caused by that offence.

Sub-section (8). *By a district court.* A soldier who does not demand a district court may be tried by a regimental court, Rule 7 (A).

Sub-section (9). *Minor punishment.* This prevents the award of a minor punishment for absence without leave exceeding seven days, if the full term of imprisonment is awarded. See Q.R., 1885, Sect. VI, paras. 42—46. Non-commissioned officers may be reprimanded, but not subjected to minor punishments. *Ib.*, para. 44.

Rule 6 (B) prohibits a commanding officer from increasing a punishment after he has once made his award, which is complete when the man has quitted his presence. This rule applies in the case of minor as well as of other punishments.

But a commanding officer can at any time mitigate or remit a punishment summarily awarded.

Courts-Martial.

Regimental
courts-
martial.

47. (1.) Any officer authorised by or in pursuance of this Act to convene general and district courts-martial or either of them, also any commanding officer of a rank not below the rank of captain, also any officer of rank not below the rank of captain when in command of two or more corps or portions of two or more corps, also on board a ship a commanding officer of any rank may, without warrant and by virtue of this Act, convene a regimental court-martial for the trial of offences committed by soldiers under his command.

(2.) Such court-martial shall consist of not less than three officers, each of whom must have held a commission during not less than one whole year.

(3.) The convening officer shall appoint the president.

(4.) The president of a regimental court-martial shall not be under the rank of captain, unless where the court-martial is held on the line of march, or on board any ship, or unless, in the opinion of the convening officer, such opinion to be expressed in the order convening the court and to be conclusive, a captain is not, with due regard to the public service, available, in any of which cases an officer of any rank may be president.

(5.) A regimental court-martial shall not try an officer, nor award the punishment of death or penal servitude, or of imprisonment in excess of forty-two days, or of discharge with ignominy; but, subject as aforesaid, and save as in this Act specially mentioned, any offence under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished by a regimental court-martial.

The principal enactments which govern the convening, composition, and procedure of courts-martial are contained in this group of sections (ss. 47—56). The remainder of the law will be found in the supplemental provisions of the Act as to courts-martial (ss. 122—130), and as to evidence (ss. 163—165); and in the Rules of Procedure made under s. 70. Section 55 provides for the convening of the exceptional tribunal of a summary court-martial to try offences committed on active service, which it is not practicable to try by an ordinary court. Certain questions relating to jurisdiction of courts-martial are dealt with in ss. 157—162.

See chapter III for general explanation of the constitution and practice of courts-martial; and for details see the Rules of Procedure and notes. The Queen's Regulations, 1885, Sect. VI, para. 35, specify the offences which a commanding officer is empowered, without reference to superior authority, to refer to trial by regimental court-martial; and point out (paras. 64 and 68) the general rules under which different classes of offences should be dealt with by a lower or higher tribunal.

Sub-section (1). *Commanding officer.* This does not mean any officer having command, but the commanding officer within the meaning of s. 46 as defined by Rule 128; see Q.R., 1885, Sect. VI, para. 12. An officer, therefore, will not have power to convene a regimental court-martial, unless he either (a) holds a warrant to con-

Part I. — vene a general or district court-martial; or (b) being of the rank of captain or higher rank, is in command of detachments of two or more corps; or (c), being of the rank of captain or higher rank, is the commanding officer as defined by Rule 128, i.e., the officer whose duty it is to tell off the prisoner; or (d) is the commanding officer of soldiers on board a ship.

By soldiers under his command. A camp follower or other person subject to military law as a soldier, but who does not belong to Her Majesty's forces, cannot be tried by regimental court-martial, s. 184. As to speedy convening of a regimental court, see Rules 16, 17.

Ship. This section will apply to a military court-martial, if otherwise allowed to be held on board a ship commissioned by Her Majesty. See Order in Council, para. (7), M.M.L., p. 781.

Sub-section (2). *A commission.* Consequently an officer who had held a militia commission for eleven months, would be qualified to sit at the end of one month after he has obtained his army commission.

Sub-section (3). The convening officer cannot preside himself, or indeed be a member of the court. Section 50 (2). The president must be appointed by name.

Sub-section (4). As to the duty of the president, see Rule 58.

As to the confirmation of the sentence of a regimental court-martial, see s. 54 (1) (a).

Sub-section (5). *Officer.* This expression includes warrant and other officers holding honorary commissions (s. 190), and persons subject to military law as officers (s. 175). It must also be recollected that a warrant officer not holding a honorary commission cannot be tried by a regimental court-martial; s. 182 (1). Moreover by Q.R., 1885, Sect. VI, para. 4A, it is laid down that as a rule a non-commissioned officer above the rank of corporal is not to be tried by such court.

Officers of any corps may sit on a regimental court-martial (s. 50 (1)), and the offender may be tried although no officer of the court belongs to the corps of the offender. For instance, a general officer may order a regimental court-martial to assemble, composed of officers from one or more corps, to try a staff clerk. But see Rule 20 (B) as to auxiliary forces. A qualified officer willing to sit may sit, although not under the orders of the convening officer: e.g., the commanding officer of a detached part of a corps may convene a regimental court-martial composed of officers of other corps, if they are willing to serve.

48. The following rules are enacted with respect to general courts-martial and district courts-martial :

(1.) A general court-martial shall be convened by Her

General and
district
courts-
martial.

Majesty, or some officer deriving authority to convene a general court-martial immediately or mediately from Her Majesty :

- (2.) A district court-martial shall be convened by an officer authorised to convene general courts-martial, or some officer deriving authority to convene a district court-martial from an officer authorised to convene general courts-martial :
- (3.) A general court-martial shall consist in the United Kingdom, India, Malta, and Gibraltar of not less than nine, and elsewhere of not less than five officers, each of whom must have held a commission during not less than three whole years, and of whom not less than five must be of a rank not below that of captain :
- (4.) A district court-martial shall consist in the United Kingdom, India, Malta, and Gibraltar of not less than five, and elsewhere of not less than three officers, each of whom must have held a commission during not less than two whole years :
- (5.) The minimum number mentioned in this section for a general or a district court-martial shall be the legal minimum for that court-martial :
- (6.) A district court-martial shall not try a person subject to military law as an officer, nor award the punishment of death or penal servitude ; but, subject as aforesaid, any offence under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished by either a general or district court-martial :
- (7.) An officer under the rank of captain shall not be a member of a court-martial for the trial of a field officer :
- (8.) Sentence of death shall not be passed on any prisoner without the concurrence of two-thirds at the least

Part I.

of the officers serving on the court-martial by which he is tried.

- (9.) The president of a court-martial, whether general or district, shall be appointed by order of the authority convening the court; but he shall not be under the rank of field officer, unless the officer convening the court is under that rank, or unless in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening the court, and to be conclusive, a field officer is not, with due regard to the public service, available, in either of which cases an officer not below the rank of captain may be the president of such court-martial; and he shall not be under the rank of captain, except in the case of a district court-martial, where in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening the court, and to be conclusive, a captain is not, having due regard to the public service, available.

With respect to warrants authorising the convening of general courts-martial, see s. 122: and Chapter III, paras. 20—22.

The power to convene district courts-martial is not given specifically by warrant, but is an incident of the power to convene general courts-martial: in other words, an officer authorised to convene general courts-martial may either himself convene, or delegate to other officers power to convene district courts-martial (s. 123).

As to the duty of an officer before convening a court, and speedy convening of court, see Rules 16, 17.

A convening officer can increase, but cannot diminish the legal minimum of members of a court-martial; he must therefore take care to convene a court with not less than the minimum, otherwise the proceedings are void.

As to the eligibility of officers, and the disqualification by interest of officers to serve on courts-martial, see s. 50 and Rule 19.

Officers of any corps may serve, but the court must not (save in certain exceptional cases) be composed exclusively of officers of the same regiment or battalion. Rule 20 (A).

As to trial of a member of the auxiliary forces, see Rule 20 (B).

As to the rank of the members of a general court, see sub-section (3), and Rule 21. If any officer of less standing or rank than required by this section is a member of the court, the proceedings will be invalid.

Sub-section (9). The president must be appointed by name, and directly by the convening officer. The duties of the president are laid down in Rule 58.

Whenever a general officer or colonel is available, an officer of inferior rank is not to be appointed president of a general court-martial; and on the trial of the commanding officer of a corps, as many members as possible must hold or have held commands equivalent to that held by the prisoner. Q.R., 1885, Sect. VI, para. 95.

49. (1.) Where a complaint is made to any officer in command of any detachment or portion of troops in any country beyond the seas, that an offence has been committed by any person subject to military law under his command against the property or person of any inhabitant of or resident in such country,—

Field general
courts-
martial.

Then, if in the opinion of such officer it is not practicable that such offence should be tried by an ordinary general court-martial, it shall be lawful for him, although not authorised to convene general courts-martial, to convene a court-martial, in this Act referred to as a field general court-martial, for the trial of the person charged with such offence, provided as follows :

- (a.) A field general court-martial shall consist of not less than three officers ;
- (b.) The convening officer may preside, but he shall, whenever he deems it practicable, appoint another officer as president, who may be of any rank, but shall, if practicable in the opinion of the convening officer, be not below the rank of captain.

(2.) Section forty-eight of this Act shall not apply to a field general court-martial, but sentence of death shall not be passed on any prisoner by a field general court-martial without the concurrence of all the members.

(3.) A field general court-martial may, notwithstanding the restrictions enacted by this Act in respect of the trial

Part I. by court-martial of civil offences within the meaning of this Act, try any person subject to military law who is under the command of the convening officer and is charged with any such offence as is mentioned in this section, and may award for such offence any sentence which a general court-martial is competent to award for such offence: Provided always, that no sentence of any such court-martial shall be executed until confirmed as provided by this Act.

The object of the field general court-martial which may be convened under this section is the speedy trial of offences committed abroad—whether on active service or not, and whether within or without the Queen's dominions—against inhabitants of, or residents in, the country, and it will only be convened where it is impracticable to try the offence by an ordinary general court-martial. See Rule 103, as to procedure. The court cannot try an offender not under the command of the convening officer.

Sub-section (3). *Restrictions enacted by this Act.* See s. 41 (a).

As to confirmation of sentence, s. 54 (1) (d).

Courts-
martial in
general.

50. (1.) The officers sitting on a court-martial may belong to the same or different corps, or may be unattached to any corps, and may try persons belonging or attached to any corps.

(2.) The officer who convened a court-martial shall not, save as is otherwise expressly provided by this Act, sit on that court-martial.

(3.) Any of the following persons, that is to say—A prosecutor or witness for the prosecution of any prisoner, or the commanding officer of the prisoner within the meaning of the provisions of this Act which relate to dealing with a case summarily, or the officer who investigated the charges on which a prisoner is arraigned, shall not, save in the case of a field general court-martial, sit on the court-martial for the trial of such prisoner, nor shall he act as judge advocate at such court-martial.

Sub-section (1). If an officer is competent to sit on a court-martial, he is *qualified* to sit on any court of the same description, irrespective of his *obligation* to sit. A convening officer may, therefore, by arrangement, avail himself of the services of an

officer not under his orders. A general or district court must, as far as seems to the convening officer practicable, be composed of officers of different corps, Rule 20 (A); and see as to the trial of a member of the auxiliary forces, Rule 20 (B). See note to s. 47 (5). The definition of corps in s. 190 (15) includes the Royal Marines.

Sub-section (2). *Save as otherwise provided.* See s. 49 (1), (b), which relates to a field general court-martial, and s. 55 and Rule 105, which relate to summary courts-martial.

Sub-section (3). A member of the court or a judge advocate is a competent witness for the defence, but not for the prosecution. In the case of a field general court-martial, an officer is disqualified by Rule 103 (D) for serving, if he is the prosecutor, or a witness for the prosecution.

Within the meaning, &c., i.e., of s. 46 and Rule 128.

Investigated the charges. The officer who investigated is usually the commanding officer of the prisoner; when he is not, he is equally excluded by these words. He has been defined as meaning the officer who in a judicial capacity sifted the evidence in such a way as to acquaint him^{self} with, and lead him to form a conclusion upon, the merits of the case, and does not include an officer who merely took down the evidence, or through whose hands the charges passed merely formally or ministerially. See also Rule 19 (B) iii, as to exclusion of member of court of inquiry.

51. (1.) A prisoner about to be tried by any court-martial may object, for any reasonable cause, to any member of the court, including the president, whether appointed to serve thereon originally or to fill a vacancy caused by the retirement of an officer objected to, so that the court may be constituted of officers to whom the prisoner makes no reasonable objection. Challenges
by prisoner.

(2.) Every objection made by a prisoner to any officer shall be submitted to the other officers appointed to form the court.

(3.) If the objection is to the president, such objection, if allowed by one-third or more of the other officers appointed to form the court shall be allowed, and the court shall adjourn for the purpose of the appointment of another president.

(4.) If an objection to the president is allowed, the authority convening the court shall appoint another

Part I. president, subject to the same right of the prisoner to object.

(5.) If the objection is to a member other than the president, and is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the prisoner to object.

(6.) In order to enable a prisoner to avail himself of his privilege of objecting to any officer, the names of the officers appointed to form the court shall be read over in the hearing of the prisoner on their first assembling, and before they are sworn, and he shall be asked whether he objects to any of such officers, and a like question shall be repeated in respect of any officer appointed to serve in lieu of a retiring officer.

It will be observed that this section gives the prisoner an absolute right to a new president, if the prisoner's challenge of the president is allowed by one-third of the officers appointed to form the court.

As to challenges generally see Rule 25 and note; as to adjourning for the purpose of appointing fresh members, and the power to convene another court, Rule 18; and as to challenges where a court is being sworn to try several prisoners, Rule 70 (A) (B).

Administra-
tion of oaths.

52. (1.) An oath shall be administered by the prescribed person to every member of every court-martial before the commencement of the trial in the following form; that is to say,

"You do swear, that you will well
"and truly try the prisoner [or prisoners] before the court
"according to the evidence, and that you will duly
"administer justice according to the Army Act now in
"force, without partiality, favour, or affection, and you do
"further swear that you will not divulge the sentence of
"the court until it is duly confirmed, and you do further
"swear that you will not on any account at any time

"whatsoever disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you GOD."

(2.) An oath in the prescribed form or forms shall be administered by the prescribed person to the judge advocate or person officiating as judge advocate (if any), and also to every officer in attendance on a court-martial for the purpose of instruction (if any), and also to every shorthand writer (if any), in attendance on the court-martial.

(3.) Every witness before a court-martial shall be examined on oath, which the president or other prescribed person shall administer in the prescribed form.

(4.) If a person by this Act required either as a member of, or person in attendance on, or witness before a court-martial, or otherwise in respect of a court-martial, to take an oath, objects to take an oath, or is objected to as incompetent to take an oath, the court, if satisfied of the sincerity of the objection, or, where the competence of the person to take an oath is objected to, of the oath having no binding effect on the conscience of such person, shall permit such person instead of being sworn to make a solemn declaration in the prescribed form, and for the purposes of this Act such solemn declaration shall be deemed to be an oath.

See 32 & 33
Vict. cap. 68,
s. 4.

Sub-section (1). *By the prescribed person.* This person is prescribed by Rule 26. The oath taken by members of the court binds them in their capacity of jurors to find a true verdict according to the evidence (discarding from their minds any private knowledge or information they may happen to possess), and in their capacity of judges to duly administer justice; as well as to keep secret the votes of members, and (until confirmed) the sentence of the court.

Sub-section (2). The forms of oaths for judge advocate, for officer attending for instruction, for shorthand writer and interpreter, and the person to administer them, are prescribed by Rules 27-30.

Sub-section (8). The form of oath for a witness, and the person to administer it, are prescribed by Rule 80.

(A.M.L.)

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Part I. Sub-section (4). The form of solemn declaration is prescribed by Rule 28. As to swearing a person according to his own religion, see Rule 30.

The practice followed in the law courts of any colony or foreign country as to the mode of swearing or taking the affirmation of natives should usually be adopted.

For punishment of perjury committed by a witness subject to military law, see s. 29; by a civilian, see s. 126.

Procedure. 53. (1.) If a court-martial after the commencement of the trial is, by death or otherwise, reduced below the legal minimum, it shall be dissolved.

(2.) If after the commencement of the trial the president dies or is otherwise unable to attend, and the court is not reduced below the legal minimum, the convening authority may appoint the senior member of the court, if of sufficient rank, to be president, and the trial shall proceed accordingly; but if he is not of sufficient rank the court shall be dissolved.

(3.) If, on account of the illness of the prisoner before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(4.) Where a court-martial is dissolved under the foregoing provisions of this section the prisoner may be tried again.

(5.) The president of any court-martial may, on any deliberation amongst the members, cause the court to be cleared of all other persons.

(6.) The court may adjourn from time to time.

(7.) The court may also, where necessary, view any place.

(8.) In the case of an equality of votes on the finding the prisoner shall be deemed to be acquitted. In the case of an equality of votes on the sentence, or any question arising after the commencement of the trial except the finding, the president shall have a second or casting vote.

(9.) When a court-martial recommends a prisoner to mercy, such recommendation shall be attached to and

form part of the proceedings of the court, and shall be promulgated and communicated to the prisoner, together with the finding and sentence. Part I.

Sub-section (1). In the event of a dissolution of the court before a finding of acquittal, or a finding of guilty and sentence thereon, the prisoner may be tried again, sub-section (4); Rule 65 (B): but it may frequently be inexpedient to convene a fresh court for such trial, especially where the prisoner has been for some time under arrest or in confinement.

Sub-section (2). *Is unable to attend.* The court cannot proceed at all without a president, and in the event of his absence must adjourn till he can attend, or till his place is supplied by the convening authority. See Rule 64 (B).

Sub-section (3). *Illness of the prisoner.* A medical certificate should always where possible be obtained, stating that the illness of the prisoner renders his presence in court dangerous to himself or others, and also the time when, in the opinion of the medical officer, the prisoner will be able to be present.

Impossible to continue. This means to continue within a reasonable time having regard to all the circumstances.

Sub-section (5). *Cause the court to be cleared.* If more convenient the court may withdraw for deliberation. See Rule 62.

Sub-section (6). *Adjourn.* See as to adjournment, Rule 64.

Sub-section (7). *View.* The convening officer cannot depute so many members as he might think fit to view a place, as the view must be in open court (Rule 62 (B)), i.e., in the presence of all the members, the prosecutor, and prisoner.

Sub-section (8). *Acquitted.* In such a case the acquittal, if it relates to all the charges, must be at once pronounced in open court, and the prisoner must be discharged. Section 54 (8).

Sub-section (9). As a recommendation to mercy is part of the proceedings, any expression of opinion in it in relation to the finding must be read with and as part of the finding.

Where, in a recommendation to mercy, a court expresses an opinion inconsistent with the guilt of the prisoner, for instance, where the charge was for striking a superior, and the court stated their opinion that the prisoner "did not intend to strike," it was held that it must be treated as an acquittal, the intent being an element of the offence.

54. (1.) The following authorities shall have power to confirm the findings and sentences of court-martial; that is to say, Confirmation, revision, and approval of sentences.

(a.) In the case of a regimental court-martial, the con-

Part I.

vening officer or officer having authority to convene such a court-martial at the date of the submission of the finding and sentence thereof :

- (b.) In the case of a general court-martial, Her Majesty, or some officer deriving authority to confirm the findings and sentences of general courts-martial immediately or mediately from Her Majesty :
- (c.) In the case of a district court-martial, an officer authorised to convene general courts-martial, or some officer deriving authority to confirm the findings and sentences of district courts-martial from an officer authorised to convene general courts-martial :
- (d.) In the case of a field general court-martial, an officer authorised to confirm the findings and sentences of general courts-martial for the trial of offences in the force of which the detachment or portion of troops under the command of the convening officer forms part.

(2.) The authority having power to confirm the finding and sentence of a court-martial may send back such finding and sentence or either of them, for revision once, but not more than once, and it shall not be lawful for the court on any revision to receive any additional evidence ; and where the finding only is sent back for revision, the court shall have power without any direction to revise the sentence also. In no case shall the authority recommend the increase of a sentence, nor shall the court-martial on revisal of the sentence, either in obedience to the recommendation of an authority, or for any other reason, have the power to increase the sentence awarded.

(3.) The finding of acquittal, whether on all or some of the offences with which the prisoner is charged, shall not require confirmation or be subject to be revised, and if it relates to the whole of the offences shall

be pronounced at once in open court, and the prisoner shall be discharged. **Part I.**

(4.) A member of a court-martial shall not have authority to confirm the finding or sentence of that court-martial, and where a member of a court-martial becomes confirming officer he shall refer the finding and sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall, for the purposes of this Act, be deemed to be in that instance the confirming authority ; and where a court-martial is held in a colony, and there is no such superior authority in that colony, the Governor of that colony shall have power to confirm the finding and sentence of such court-martial in like manner in all respects as if he were such superior authority as above mentioned.

(5.) An officer having authority to confirm the finding and sentence of a court-martial may withhold his confirmation, wholly or partly, and refer such finding and sentence, or the part not confirmed, to any superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall for the purpose of this Act be deemed to be in that instance and to the extent of such reference the confirming authority.

(6.) Subject to the provisions of this Act with respect to the finding of acquittal, the finding and sentence of a court-martial shall not be valid except in so far as the same may be confirmed by an authority authorised to confirm the same.

(7.) Sentence of death when passed in a colony shall not, unless passed in respect of an offence committed on active service, be carried into effect unless, in addition to the confirmation otherwise required by this Act, it is approved by the Governor of the colony.

(8.) Sentence of death when passed in India in respect

Part I. of the offence of treason or murder shall not (except where the offence was committed on active service) be carried into effect unless, in addition to the confirmation otherwise required by this Act, it is approved by the Governor-General, or if the offender was tried within the limits of any presidency, by the Governor-General or the Governor of that presidency.

(9.) Where a person subject to military law is convicted of manslaughter or rape, or any other civil offence under the section of this Act relating to the trial by court-martial of civil offences, and is sentenced to penal servitude, such sentence shall not be carried into execution unless, in addition to the confirmation otherwise required by this Act, it is approved, if the offender has been tried in India, by the Governor-General, or if the offender has been tried within the limits of any presidency, by the Governor-General, or by the Governor of the presidency, or if he has been tried in a colony, by the Governor of the colony.

As to confirmation and revision generally, see Chapter III, paras. 89-97. Confirmation is complete when the proceedings are promulgated.

If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null, and it is open to the proper authority to confirm.

Sub-sections (2) and (3). The effect is that revision, except for curing legal defects in the finding or sentence, can only be used for acquitting a prisoner or mitigating the sentence; inasmuch as revision can only be ordered in case of conviction, and if it is ordered the sentence cannot be increased. See Rule 50 and note.

The Act, by declaring that an acquittal on a charge shall not require confirmation, makes the decision of the court on that charge, both as regards the facts and the law, absolute. In such a case the confirming officer must not make in the proceedings any remarks on the conclusion of the court: at the same time, if he is of opinion that the court has been guided by principles detrimental to the discipline of the army, or that otherwise the case requires notice, he should report accordingly to superior military authority. See Rule 50 (A) and Q.R., 1885, Sect. VI, para. 106.

Where a finding on being sent back for revision is varied in any material respect by the court, a new sentence (not, however, necessarily differing from the original sentence) must be passed, for on the original finding being revoked, the sentence based upon it falls. Where a new sentence is not passed, the prisoner is not legally under any sentence.

Sub-section (4). See note to Rule 95. *Colony*. See the definition, which includes Cyprus, in s. 190.

Sub-section (5). See note to Rule 95 (A).

Sub-section (6). The result of this sub-section is that if a finding of conviction is not confirmed it is invalid (see also Rule 119 (A), and Chapter III, para. 5), consequently there is no conviction, and the prisoner has not been convicted by a court-martial for the purpose either of any subsequent trial or of any entry in the defaulters' book. See s. 157, and Rule 55.

It has been ruled that confirmation ought to be withheld in the following cases:—

Where the provisions of s. 47 in the case of a regimental, or those of s. 48 in that of a general or district court-martial, and in either case those of ss. 50, 51, or 52, have been contravened.

Where evidence legally inadmissible has been admitted against a prisoner, and without such evidence a conviction is not justified.

Where a prisoner has been unduly restricted in his defence.

Where a finding of guilty has been come to with the exception of certain words of the charge, and these words so far describe the essence of the offence, that the finding, with the words omitted, fails to disclose an offence of which the court could legally have convicted.

Where a special finding of guilty fails to disclose an offence of which the court might have legally convicted.

Where the charge is bad in law even when the prisoner has pleaded guilty.

Where there has been such a deviation from the rules of procedure that "injustice has been done to the prisoner."

Where upon a plea of guilty, Rule 36 (A) has not been complied with.

Sub-section (7). *Active service*. See the definition in s. 189.

Sub-sections (8) and (9). *India*. See the definition in s. 190.

Civil offence. See s. 41.

55. (1.) Where a person subject to military law and being on active service with any body of forces is charged with an offence, a summary court-martial may be convened and shall have jurisdiction to try such offence, if the officer

Summary
court-
martial,

Part I. convening the court is of opinion that an ordinary court-martial cannot, having due regard to the public service, be convened to try such offence.

(2.) A summary court-martial shall be convened and constituted, and the members and witnesses sworn, and its proceedings conducted, and its finding and sentence confirmed in such manner as may be provided by this section and rules from time to time made in pursuance of this Act; and sections fifty to fifty-four (both inclusive) of this Act, shall not apply to such court-martial; provided that,—

- (a.) A summary court-martial shall consist of not less than three officers, unless the officer convening the same is of opinion that three officers are not available, having due regard to the public service, in which case the court-martial may consist of two officers; and
- (b.) Where a summary court-martial consists of less than three officers, the sentence shall not exceed such summary punishment as is allowed by this Act, or imprisonment; and
- (c.) A sentence of death or penal servitude awarded by a summary court-martial shall not be carried into effect unless and until it has been confirmed by the general or field officer commanding the force with which the prisoner is present at the date of his sentence.

The object of this section is to allow of the speedy trial and punishment of offenders on active service, where it is impracticable, having due regard to the public service, to try the case by an ordinary court-martial. It will be observed that the convening officer may himself sit as president, but if so he cannot confirm the finding and sentence unless he considers it impracticable to delay the case, Rules 105 (B), 119 (C). The court can try any person subject to military law for any offence, and can award any punishment, save that where the court consists only of two officers, it cannot award any punishment greater than the summary punishment allowed by the Act, or imprisonment. See as to the composition and procedure of the court, Rules 104 to 122.

The court, therefore, differs from a field general court-martial under s. 49, which may be convened when troops are not on active service, but can only try a person accused of an offence committed against the property or person of an inhabitant of the country where the troops are serving.

The following conditions are essential to the legality of summary courts-martial:—

- (i.) The person tried must be subject to military law, and be on active service with a body of forces.
- (ii.) The convening officer must be qualified as described in Rule 104 (A); and must be satisfied as described in Rule 104 (B).
- (iii.) The court must consist of not less than three officers, if three are available, and if not, of two; and officers disqualified by Rule 105 (D) must not sit. In composing the court regard must be had to Rule 105.
- (iv.) A record of the proceedings must be kept by the provost-marshal or assistant provost-marshal, if one is present, and if not, then by the president and the officer charged with the promulgation, stating, at the least, the name (or description) of the offender, the offence charged, the finding, the sentence, and the confirmation. Rule 106.
- (v.) The court and witnesses must be sworn. Rules 110, 113.
- (vi.) A punishment exceeding (i.e., higher in the scale than) summary punishment or two years' imprisonment, cannot be inflicted in pursuance of the sentence of a summary court-martial composed of two officers.
- (vii.) The finding and sentence must be confirmed by an officer qualified in this respect, as provided by Rule 119.

56. (1.) A prisoner charged before a court-martial with stealing may be found guilty of embezzlement or of fraudulently misapplying money or property.

Conviction of less offence permissible on charge of greater.

(2.) A prisoner charged before a court-martial with embezzlement may be found guilty of stealing or fraudulently misapplying money or property.

(3.) A prisoner charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(4.) A prisoner charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

(5.) A prisoner charged before a court-martial with any

Part I. other offence under this Act may, on failure of proof of an offence being committed under circumstances involving a higher degree of punishment, be found guilty of the same offence as being committed under circumstances involving a less degree of punishment.

This section will often prevent a failure of justice by permitting a prisoner charged with one of the offences mentioned in the section to be found guilty of a cognate offence.

Moreover, a man charged with an offence committed under circumstances involving a higher degree of punishment may be found guilty of the same offence under circumstances involving a less degree of punishment.

For example, a man charged with striking his superior officer in the execution of his office may be convicted of striking his superior officer; and a man charged with an offence committed on active service may be found guilty of the same offence committed not on active service; or, again, a man charged with wilfully allowing the escape of a prisoner may be found guilty of negligently allowing his escape. The converse, of course, is not allowed; that is to say, a prisoner charged with an offence cannot be convicted of a greater offence of the same class.

In practice it will usually be expedient to prefer alternative charges, one charging the greater and the other the less offence, rather than to rely on this section. See Rules, Appendix I, note as to use of Forms of Charges (6).

But except in the cases specified in this section a court has no power to find a prisoner guilty of any offence except that with which he is charged. A court, however, may (as allowed by Rule 43 (E)) find a prisoner guilty of a charge with the exception of certain words or with certain immaterial variations, and this finding will be valid so long as in its reduced or varied form it discloses an offence under the Act.

EXECUTION OF SENTENCE.

Commuta-
tion and
remission of
sentences.

57. (1.) The confirming authority may, when confirming the sentence of any court-martial, mitigate or remit the punishment thereby awarded, or commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court-martial, or if such punishment is death awarded for the offence of murder, then for penal servitude or such less

punishment as in this Act mentioned. The confirming authority may also suspend for such time as seems expedient the execution of a sentence.

(2.) When a sentence passed by a court-martial has been confirmed, the following authorities shall have power to mitigate or remit the punishment thereby awarded, or to commute such punishment for any less punishment or punishments] to which the offender might have been sentenced by the said court-martial, or if such punishment is death awarded for the offence of murder, then for penal servitude or such less punishment as in this Act mentioned ; that is to say,

- (a.) As respects persons undergoing sentence in any place whatever, Her Majesty or the Commander-in-Chief or the officer commanding the district or station where the prisoner subject to such punishment may for the time be, or any prescribed officer ; and
- (b.) As respects persons undergoing sentences in India the Commander-in-Chief of the forces in India, also as respects persons undergoing sentences in any presidency, the Commander-in-Chief of the forces in that presidency ; and
- (c.) As respects persons undergoing sentences in any colony, the officer commanding the forces in that colony ; and
- (d.) As respects persons undergoing sentences in any place not in the United Kingdom, India, or a colony, the officer commanding the forces in such place :

(3.) Provided that the power given by this section shall not be exercised by an officer holding a command inferior to that of the authority confirming the sentence, unless such officer is authorised by such confirming authority or other superior military authority to exercise such power.

Part I. (4.) An authority having power under this section to mitigate, remit, or commute any punishment may, if it seem fit, do all or any of those things in respect of a person subject to such punishment.

(5.) The provisions of this Act with respect to an original sentence of penal servitude or imprisonment shall apply to a sentence of penal servitude or imprisonment imposed by way of commutation.

See Chapter III, para. 98, and as to diminution of sentence for offences in several charges, where the finding on one or more of them is not confirmed, see Rule 53. See also as to duty of confirming officer, Q. R., 1885, Sect. VI, paras. 103–107.

Mitigation is the awarding a less amount of the same species of punishment, as, for example, by reducing the length of imprisonment to which an offender has been sentenced; and is in effect equivalent to a remission of part of the sentence.

Remission may be remission of the whole or of part of the sentence; thus a sentence of imprisonment with hard labour may be remitted altogether, or a portion of the term, or the hard labour may be remitted. As to notification of remission of imprisonment, Q. R., 1885, Sect. VI, para. 185.

Commutation is changing the description of punishment by awarding a less punishment—as imprisonment in lieu of penal servitude—or dismissal in lieu of cashiering.

Suspension of the execution of a sentence, which can only take effect after confirmation, does not postpone the commencement of any term of penal servitude or imprisonment.

The powers conferred by this section may be exercised by the confirming authority, as such, under (1), only when confirming the sentence: after promulgation, when the confirmation is complete, the power of the confirming authority in that capacity ceases, and the above powers can only be exercised under (2), i.e., by Her Majesty, the Commander-in-Chief, and the officer commanding the district, and also abroad by the authorities mentioned in sub-section (2) (b) (c) (d). Under Rule 125 (C) the general commanding the forces in Ireland, as respects a prisoner in Ireland, and the Adjutant-General as respects all prisoners can also exercise these powers; but they cannot be exercised by any officer inferior to the confirming authority without leave from that authority.

The confirming authority as such cannot commute a punishment into general service. See s. 83 (7) and note.

For definitions of India and colony, see s. 190.

The section allows an authority to commute a punishment to

any one other punishment below it in the scale that is applicable to the offence. But partial commutation of any one punishment by the substitution for a portion thereof of another punishment is illegal. Thus, where in a case of "losing by neglect" a court passed a sentence of 84 days' imprisonment, but omitted to pass a sentence of stoppage, it was ruled that the confirming authority could not commute a portion of the imprisonment to the stoppages which the court might have awarded.

The penal servitude or imprisonment under commutation, must commence on the date of the original sentence, even though not one of penal servitude or imprisonment, as the case may be.

58. When a person subject to military law is convicted by a court-martial, whether in the United Kingdom or elsewhere, either within or without Her Majesty's dominions, and is sentenced to penal servitude, such conviction and sentence shall be of the same effect as if such person (in this Act referred to as a military convict) had been convicted in the United Kingdom of an offence punishable by penal servitude and sentenced to penal servitude by a competent civil court, and all enactments relating to a person sentenced to penal servitude by a competent civil court shall, so far as circumstances admit, apply accordingly.

Effect of
sentence of
penal
servitude.

Sections 58 to 62 relate to penal servitude, and provide separately for the execution of sentences of penal servitude passed in the United Kingdom, in India and the colonies, and in foreign countries.

Before the passing of the Army Discipline and Regulation Act, 1879, a convict sentenced to penal servitude in India or a colony might be compelled to undergo a portion of his sentence in the country where he was sentenced. The effect of these sections and of the proviso to s. 131 is, that wherever a sentence of penal servitude is passed, the convict (subject to the exceptions mentioned in the above proviso and the note to s. 131), must, as soon as practicable, be brought to the United Kingdom to undergo his sentence in some prison in which English penal servitude prisoners can be confined.

These sections further enable a convict to be discharged by certain military authorities at any time before he reaches his penal servitude prison, and also provide for his conveyance in custody from the place where he is sentenced to penal servitude, however distant, until his arrival in the prison where he is to undergo his sentence.

Part I.

In the United Kingdom, though he may be kept in military custody till sent to a penal servitude prison, his period of military custody will necessarily be short, as his commanding officer or other military authority should commit him, without unnecessary delay after the promulgation of the sentence, to some public prison. He then comes under the jurisdiction of the Home Secretary, and is out of the jurisdiction of the military authorities.

Abroad, on the other hand, a soldier under sentence of penal servitude must necessarily be kept for some length of time in intermediate custody, and may be so kept in military custody or in civil custody, and may be moved from one to the other as occasion requires. When in civil custody he must be kept in an "authorised prison" (s. 62) unless it is not practicable, in which case (s. 60) (5) he may be confined temporarily in any civil prison with the assent of the authority having jurisdiction over the prison.

For commencement of term of penal servitude, see s. 68.

The provisions of the Act will continue to apply to a person sentenced to penal servitude during the term of his sentence, though he has been discharged or dismissed from Her Majesty's service; s. 158.

Execution of sentences of penal servitude passed in the United Kingdom.

59. (1.) Where a sentence of penal servitude is passed by a court-martial in the United Kingdom, the military convict on whom such sentence has been passed shall, as soon as practicable, be transferred to a penal servitude prison to undergo his sentence according to law, and until so transferred shall be kept in military custody.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for his transfer to a penal servitude prison. •

(3.) At any time before his arrival at a penal servitude prison, the discharging authority (hereafter in this section mentioned) may by order discharge the military convict.

(4.) Any one or more of the following officers shall be the committing authority for the purposes of this section, namely,—

- (a.) The Commander-in-Chief ;
- (b.) The Adjutant-General ;
- (c.) The commanding officer of the military convict ; and
- (d.) Any other prescribed officer.

(5.) Any one of the following officers shall be the dis- Part I.
charging authority for the purposes of this section,
namely,—

- (a.) The Commander-in-Chief ;
- (b.) The Adjutant-General; and
- (c.) Any other prescribed officer.

Sub-section (1). *Penal servitude prison*. For definition see s. 62.

Sub-sections (4), (5). *Commanding officer*. This means the commanding officer as defined by Rule 128. See Q.R., 1885, Section VI, para. 12.

Prescribed officer. The officer commanding the military district or station where the military convict or military prisoner may for the time being be, and when the convict or prisoner is in Ireland, the General commanding the forces in Ireland, is prescribed as the committing authority by Rule 125 (A) for the purposes of this section, and also of ss. 60, 61, 64, and 65.

For general provisions as to orders of the Commander-in-Chief, Adjutant-General, and general officers, see s. 172.

For form of order of commitment, see Rules, App. III, Form A; and see generally Q.R., 1885, Section VI, para. 157.

The military authorities cannot discharge a military convict after he has reached a penal servitude prison.

60. (1.) Where a sentence of penal servitude is passed by a court-martial in India or any colony, the military convict on whom such sentence has been passed shall, as soon as practicable, be transferred to a penal servitude prison to undergo his sentence according to law. Execution of sentences of penal servitude passed in India or a colony.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for his transfer to a penal servitude prison.

(3.) The military convict during the period which intervenes between the passing of his sentence and his arrival at the penal servitude prison (in this section referred to as the term of his intermediate custody) shall be deemed to be in legal custody.

(4.) The military convict during his term of intermediate custody may be kept in military custody or in civil custody, or partly in one description of custody and partly in the other, and may from time to time be transferred from

Part I. military custody to civil custody and from civil custody to military custody as occasion may require, and may during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his detention and removal.

(5.) "Civil custody," for the purposes of this section, means custody in any authorised prison ; nevertheless, where it is not practicable to place the military convict in an authorised prison, he may, by way of civil custody, be confined temporarily in any other prison with the assent of the authority having jurisdiction over that prison.

(6.) The military convict whilst in any prison in which he may legally be placed may be dealt with, in respect of hard labour and otherwise, according to the rules of that prison.

(7.) An order of the removing authority (hereafter in this section mentioned) shall be a sufficient authority for the transfer of the military convict from military custody to civil custody, and from civil custody to military custody, and his removal from place to place, and for his detention in civil custody, and generally for dealing with such convict in such manner as may be thought expedient during the term of his intermediate custody.

(8.) The removing authority during the term of the intermediate custody of the military convict may from time to time by order provide for his being brought before a court-martial, or any civil court, either as a witness or for trial or otherwise ; and an order of such authority shall be a sufficient warrant for the delivering him into military custody, and detaining him in custody until he can be returned and for returning him to the place from whence he is brought, or to such other place as may be determined by the removing authority.

(9.) Any directions of the removing authority relating to the mode in which the military convict is to be dealt with during the term of his intermediate custody may be contained in the same order or in several orders ; and if the

orders are more than one, they may be by different officers and at different times.

(10.) At any time before the military convict arrives at a penal servitude prison the discharging authority (hereafter in this section mentioned) may by order discharge the military convict.

(11.) Any one or more of the following officers shall be the committing authority for the purposes of this section ; that is to say,

(a.) In India—

(i.) The Commander-in-Chief of the forces in India ;

(ii.) The Commander-in-Chief of the forces in any presidency in India ;

(iii.) The Adjutant-General in India ;

(iv.) The Adjutant-General in any presidency in India ; and

(b.) In a colony, the officer commanding the forces in that colony ; and

(c.) In any case, whether in India or in a colony, the prescribed officer.

(12.) Any one or more of the following officers shall be the removing authority for the purposes of this section ; that is to say,

(a.) Any officer in this section named as the committing authority ; also

(b.) The officer commanding the military district or station where the military convict may for the time being be ; also

(c.) Any other prescribed officer.

(13.) Any of the following officers shall be the discharging authority for the purposes of this section ; that is to say,

(a.) The officer who confirmed the sentence ; also

(b.) Any officer in this section named as the committing authority ; also

(c.) Any other prescribed officer.

(A.M.L.)

Part I.

Sub-section (1). For definition of India and colony, see s. 190 ; but it must be recollected that for the purpose of this section and the other provisions relating to the execution of sentences of penal servitude, the Channel Islands and the Isle of Man are deemed to be colonies ; section 187 (2).

As to removal to United Kingdom of prisoners sentenced to penal servitude in India or a colony, see the proviso to s. 131.

Sub-section (5). For definition of *authorised prison*, see s. 62 (2).

Sub-section (8). The statute 43 Geo. III, c. 140, empowers any of Her Majesty's judges to award a writ of *habeas corpus* for bringing any prisoner detained in any prison in England (whether subject to military law or not) before a court-martial for the purpose of giving evidence ; and s. 9 of 16 & 17 Vict. c. 30, empowers any of Her Majesty's judges or a Secretary of State to issue a warrant or order for the like purpose, and also for the purpose of bringing up a prisoner to give evidence before a civil court. This sub-section enables an offender sentenced to penal servitude to be brought up by order of the military authority either before a court-martial or a civil court to give evidence, during the interval between the passing of the sentence and his arrival at the penal servitude prison. See Q.R., 1885, Sect. VI, paras. 158-160.

Prescribed officer. See note to s. 59.

For general provisions as to orders of Commander-in-Chief and other authorities, see s. 172.

For form of order of commitment, see Rules, App. III, Form B ; and see also Q.R., 1885, Sect. VI, paras. 157-161.

Execution of sentences of penal servitude passed in a foreign country.

61. (1.) Where a sentence of penal servitude is passed by a court-martial in any foreign country, the military convict on whom such sentence has been passed shall, as soon as practicable, be transferred to a penal servitude prison for the purpose of undergoing his sentence according to law, and, until so transferred, may be kept in military custody.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for the transfer of the military convict to a penal servitude prison.

(3.) If at any time before his arrival in the United Kingdom the military convict is brought into India or any colony, he may be dealt with by the competent military

authority in India or such colony in the same manner in Part I.
all respects as if he had been there sentenced by court-
martial to penal servitude.

(4.) The military convict may at any time before he arrives at any place in the United Kingdom, India, or any colony, be discharged by the discharging authority (hereafter in this section mentioned) having jurisdiction in any place where the military convict may for the time being be.

(5.) Any one or more of the following officers shall be the committing authority for the purposes of this section that is to say,

(a.) The officer commanding the army or force with which the military convict was serving at the time of his being sentenced ;

(b.) The officer who confirmed the sentence of the court ;

(c.) Any other prescribed officer ;

(6.) Any committing authority under this section shall also be the discharging authority for the purposes of this section.

Sub-section (1). *Foreign country*. For definition see s. 190.

Sub-section (3). See s. 131, and for definition of India and colony see s. 190 ; see also s. 187 (2) as to Isle of Man and Channel Islands.

Prescribed officer. See note to s. 59.

For general provisions as to orders of Commander-in-Chief and other authorities see s. 172.

For form of order of commitment, see Rules, App. III, Form B ; and see also Q.R., 1885, Sect. VI, paras. 158-161.

62. (1.) A penal servitude prison for the purposes of the provisions of this Act relating to penal servitude means any prison or place in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily.

General provisions applicable to penal servitude.

(2.) An "authorised prison" for the purposes of the

Part I.] provisions of this Act relating to penal servitude means any prison in India or any colony which the Governor-General of India or the Governor of such colony may, with the concurrence of a Secretary of State, have appointed as a prison in which military convicts may, during the period of their intermediate custody, be confined.

(3.) After a military convict has arrived at a penal servitude prison to undergo his sentence, he shall be dealt with in the like manner as an ordinary civil prisoner under sentence of penal servitude.

Sub-section (1). See proviso to s. 131.

Execution of
sentences of
imprison-
ment.

63. (1.) Where a sentence of imprisonment is passed by court-martial or a commanding officer, the person on whom such sentence has been passed (in the provisions of this Act relating to imprisonment referred to as a military prisoner) shall undergo the term of his imprisonment either in military custody or in a public prison, or partly in one way and partly in the other.

(2.) The order of the committing authority hereafter mentioned shall be a sufficient warrant for the transfer of a military prisoner to a public prison.

(3.) A military prisoner while in a public prison shall be confined, kept to hard labour, and otherwise dealt with in the like manner as an ordinary prisoner under a like sentence of imprisonment.

(4.) A military prisoner during his conveyance from place to place, or when on board ship or otherwise, may be subjected to such restraint as is necessary for his detention and removal.

(5.) The discharging authority hereafter mentioned may, at any time during the period of a military prisoner undergoing his imprisonment, by order discharge the prisoner.

(6.) The committing authority or any other prescribed authority may at any time by order remove a military prisoner from one public prison to another, so that he be

not removed from a prison in the United Kingdom to a prison elsewhere. Part I.

(7.) The removing authority hereafter mentioned may, at any time during the period of the military prisoner undergoing his sentence in a public prison, from time to time by order provide for his being brought before a court-martial, or any civil court, either as a witness, or for trial or otherwise, and an order of such authority shall be a sufficient warrant for delivering him into military custody and detaining him in custody until he can be returned and for returning him to the place from whence he is brought, or to such other place as may be determined by the removing authority.

Sections 63 to 66 provide for the execution of sentences of imprisonment.

The effect of the provisions is that a prisoner under sentence of imprisonment, if sentenced in the United Kingdom, may be kept either in military custody, or in a public prison—that is to say, any prison in the United Kingdom in which prisoners can be confined under a sentence of a civil court; or in a military prison, that is to say, any building set apart as such by the Secretary of State under s. 133.

If sentenced in India or a colony, he may be kept in military custody, or in some “authorised prison” in the country where sentenced, i.e., a civil prison appointed as a prison for military prisoners, with the concurrence of the Secretary of State, if in India by the Governor-General, and if in a colony by the Governor of the colony (s. 65 (2)); or in a military prison—that is to say, any building set apart as such in India by the Governor-General, and in a colony by the Secretary of State, under s. 133.

If sentenced in a foreign country, then if and as soon as he is brought into the United Kingdom, India, or any colony, the provisions of the Act apply as if he had been sentenced in the United Kingdom, in India, or a colony, as the case may be: s. 66. Q.R., 1885, Sect. VI, para. 161.

A prisoner may be removed from a prison out of the United Kingdom to a prison in the United Kingdom, and from one public prison to another in the United Kingdom (sub-section (6)); but he cannot be removed from a prison in the United Kingdom to a prison elsewhere (sub-section (6)); and if he has remained in military custody and not been committed to a prison in the United Kingdom, and is removed from the United Kingdom, he cannot be

Part I.

committed to a prison elsewhere. Prisoners, therefore, in the United Kingdom, if required to be removed, can only be removed under s. 67. A prisoner sentenced in India or a colony may be removed to a military prison wherever situate if allowed by regulation (see Rule 129), but can only be removed to an "authorised prison" in another colony if such prison has been "prescribed" for this purpose by a Rule (s. 65 (1) (c), Rule 129). With reference to these sections, it must be recollected that under s. 187 (2) the Isle of Man and Channel Islands, and, under s. 190, Cyprus, are for these purposes colonies.

Where a regiment moves from one colony to another and takes its prisoners with it, they cannot be committed under their old sentence to a prison at the place of destination of the regiment unless such prison has been prescribed, *i.e.*, allowed by Rule, or is a military prison, and in the latter case the regulations on the subject must be observed.

As to a prisoner sentenced to more than twelve months' imprisonment in India or a colony being sent home unless the court or confirming authority has for special reasons otherwise ordered; or unless he is a person to whom a declaration of the Secretary of State, made under that section, is applicable, see s. 181.

Sub-section (1). *Military custody.* This expression includes provost prisons, and a prisoner may be sentenced to hard labour in them; but a prisoner under sentence exceeding 42 days, must only be committed to a provost prison, pending his commitment to a public prison. Q.R., 1885, Sect. VI, para. 162, and see paras. 207-231.

Sub-section (5). *Discharging authority.* It will be observed that the discharging authority under this section will sometimes have no power to remit the sentence on the prisoner under s. 57. It is desirable that a prisoner should not be discharged before the expiration of his sentence without his sentence being remitted. An officer, therefore, who has power to discharge a prisoner, but not to remit the sentence, should apply to some authority having power to remit the sentence, and obtain that remission before he orders the discharge of the prisoner. If, in a case of necessity, he discharges the prisoner before making such application, he should apply immediately for the remission of the sentence.

An escaped prisoner may when captured be recommitted to prison to undergo the remainder of his sentence; but if it is desired to punish him for the escape, a charge must be preferred, and he must be tried under s. 22.

See, generally, as to military prisoners, Q.R., 1885, Sect. VI, paras. 162-231; and for forms of order of commitment, &c., see Rules, App. III, Forms C—L. Q. R., 1885, Section VI, paras. 204-205.

64. Where a sentence of imprisonment is passed or is being undergone in the United Kingdom, then for the purposes of the provisions of this Act relating to imprisonment—

Part I.
Supplemental provisions as to sentences of imprisonment passed or being undergone in the United Kingdom.

(1.) The expression "public prison" means any prison in the United Kingdom in which offenders sentenced by a civil court to imprisonment can for the time being be confined ;

(2.) Any one or more of the following officers shall be the committing authority :

- (a.) The Commander-in-Chief ;
- (b.) The Adjutant-General ;
- (c.) The officer who confirmed the sentence ;
- (d.) The commanding officer of the military prisoner ; and
- (e.) Any other prescribed officer.

(3.) Any one of the following officers shall be the discharging authority :

- (a.) The Commander-in-Chief ;
- (b.) The Adjutant-General ;
- (c.) The officer commanding the military district in which the prisoner may be ;
- (d.) The officer who confirmed the sentence ;
- (e.) Any other prescribed officer ; also,
- (f.) Where the sentence was passed by the commanding officer, the commanding officer.

(4.) Any one or more of the following officers shall be the removing authority :

- (a.) The Commander-in-Chief ;
- (b.) The Adjutant-General ;
- (c.) The officer commanding the military district in which the prisoner may be ;
- (d.) Any other prescribed officer ; also,
- (e.) Where the sentence was passed by the commanding officer, the commanding officer.

Part I. Sub-section (1). *Public prison.* This includes a military prison (s. 133).

Commanding officer—Prescribed officer. See note to s. 59.

The removing authority as regards a military prisoner in Ireland includes the general commanding the forces in Ireland. (Rule 125 B.)

Supple-
mental
provision as
to sentences
of imprison-
ment passed
or being
undergone
in India or
a colony.

65. Where a sentence of imprisonment is passed or being undergone in India or any colony, then, for the purposes of the provisions of this Act relating to imprisonment—

- (1.) The expression “public prison” means any of the following prisons ; that is to say,
 - (a.) where the sentence was passed in India, any authorised prison in India ;
 - (b.) where the sentence was passed in a colony, any authorised prison in that colony ;
 - (c.) any such authorised prison in any part of Her Majesty’s dominions other than that in which the sentence was passed as may be prescribed ; and
 - (d.) any public prison in the United Kingdom as above defined for the purpose of the provisions of this Act relating to imprisonment in the United Kingdom ;
- (2.) “Authorised prison” means any prison in India or any colony which the Governor-General of India or the Governor of such colony, with the concurrence of the Secretary of State, may have appointed as a prison in which military prisoners may be confined :
- (3.) A military prisoner may temporarily be confined in a prison not a public prison, with the assent of the authority having jurisdiction over such prison. And a military prisoner who is to undergo his sentence in the United Kingdom, until he reaches a prison in the United Kingdom in

which he is to undergo his sentence, may be kept in military custody or in civil custody, and partly in one description of custody and partly in the other, and may from time to time be transferred from military custody to civil custody, and from civil custody to military custody, as occasion may require :

(4.) Any one or more of the following officers shall be the committing authority ; that is to say,

(a.) In India—

- (i.) The Commander-in-Chief of the forces in India ;
- (ii.) The Commander-in-Chief of the forces in any presidency in India ;
- (iii.) The Adjutant-General in India ; and
- (iv.) The Adjutant-General in any presidency in India ;

(b.) In a colony, the officer commanding the forces in that colony ; and

(c.) In any case, whether in India or in a colony—

- (i.) The officer who confirmed the sentence ;
- (ii.) The commanding officer of the military prisoner ; and
- (iii.) Any other prescribed officer :

(5.) Any of the following officers shall be the discharging authority :

(a.) The officer commanding the military district or station in which the prisoner may be ;

(b.) Any officer in this section named as a committing authority, with this exception, that the commanding officer shall only be a discharging authority where the sentence was passed by a commanding officer ; and

(c.) Any other prescribed officer.

Part I. (6.) Any one or more of the following officers shall be the removing authority :

- (a.) Any officer in this section named as a committing authority ;
- (b.) The officer commanding the military district or station where the prisoner may be ; and
- (c.) Any other prescribed officer. .

Sub-section (1). *Public prison* includes a military prison, s. 133.

For definitions of India and colony, see s. 190; and as to the Isle of Man and Channel Islands, see s. 187 (2).

(c.) These have been prescribed by Rule 129, see note to that Rule as to military prisons. See also s. 134, and Q.R., 1885, Section VI, paras. 166, 167.

Sub-section (2). *Authorised prison* includes a military prison in India, s. 133.

See generally as to orders and warrants of officers, s. 172 and note. As to *Commanding officer* and *Prescribed officer* see note to s. 59.

Supple-
mental
provision as
to sentences
of imprison-
ment passed
in a foreign
country.

66. Where a sentence of imprisonment is passed by a court-martial or commanding officer in any foreign country, then if and as soon as the military prisoner on whom such sentence has been passed is brought into the United Kingdom or India, or any colony, the provisions of this Act shall apply in the same manner in all respects as if the sentence of imprisonment had been passed in the United Kingdom, India, or any colony, as the case may be, with this addition, that the officer commanding the army or force to which the military prisoner belonged at the time of his being sentenced shall also be deemed to be a committing authority.

Commanding officer, see note to s. 59.

Foreign Country; India; Colony. For definitions, see s. 190; and as to Isle of Man and Channel Islands, see s. 187 (2).

Removal of
prisoner to
place where
corps is
serving.

67. (1.) The competent military authority (hereafter in this section mentioned) may give directions for the delivery into military custody of any military prisoner for the time being undergoing his sentence of imprisonment, and the removal of such prisoner, whether with his corps or

separately, to any place beyond the seas where the corps, or any part thereof, to which for the time being he belongs, is serving or under orders to serve.

(2.) The directions of such competent military authority, or an order of the removing authority issued in pursuance of such directions, shall be sufficient authority for the removal of such prisoner from the prison in which he is confined, and for his conveyance in military custody to any place designated, and for his intermediate custody during such removal and conveyance.

(3.) The competent military authority may further give directions for the discharge of the prisoner either conditionally or unconditionally at any time while he is in military custody under this section.

(4.) For the purposes of this section any one or more of the following officers shall be the competent military authority :

(a.) In the United Kingdom—

- (i.) The Commander-in-Chief ;
- (ii.) The Adjutant-General ; and
- (iii.) Any other prescribed officer.

(b.) In India—

- (i.) The Commander-in-Chief of the forces in India ;
- (ii.) The Commander-in-Chief of the forces in any presidency in India ;
- (iii.) The Adjutant-General in India ; and
- (iv.) The Adjutant-General in any presidency in India ;

(c.) In a colony, the officer commanding the forces in that colony ; and

(d.) In any case, whether in India or in a colony, the prescribed officer.

The object of this section is to enable soldiers who are undergoing sentences of imprisonment to be removed in custody for foreign service. Soldiers in prison for military crimes (desertion for instance) may in many cases be given a fresh opportunity of

Part I. recovering their characters by being at once removed to a foreign station. The section will also prevent offences committed immediately before embarkation for service from escaping all punishment; but it gives no authority to commit offenders committing such offences to any public prison on their arrival at the foreign station.

Prescribed officer. As regards a military prisoner for the time being in Ireland, the general commanding the forces in Ireland is prescribed as a competent military authority by Rule 125 (B).

For definition of India and colony, see s. 190; and as to the Isle of Man and Channel Islands, see s. 187 (2).

Commence-
ment of term
of penal
servitude
or imprison-
ment.

68. (1.) The term of penal servitude or imprisonment to which a person is sentenced by a court-martial, whether the sentence has been revised or not, and whether the prisoner is already undergoing sentence or not, shall be reckoned to commence on the day on which the original sentence and proceedings were signed by the president of the court-martial.

(2.) An offender under this Act shall not be subject to imprisonment for more than two consecutive years, whether under one or more sentences.

Under this section a term of penal servitude or imprisonment under sentence by court-martial cannot be made to commence at the expiration of a previous term of penal servitude or imprisonment, but must commence on the day on which the sentence is signed by the president of the court. If, therefore, the court desire to award imprisonment (say three months) on a prisoner already in prison for six months' imprisonment, of which three months are unexpired, the court must award six months, and similarly with respect to sentences of penal servitude.

The period of imprisonment which a soldier is to suffer, whether under one sentence or several sentences, must never exceed two years. This restriction applies where a soldier is tried at the expiration of a sentence of imprisonment for an offence committed during that sentence. Q.R., 1885, Sect. VI, para. 100. Two years is the maximum period which a prisoner can usually endure according to the system of imprisonment with hard labour in civil prisons in the United Kingdom, and is, in many cases, a more severe punishment than five years' penal servitude.

No restriction is imposed on the duration of a sentence of penal servitude, as penal servitude for life is authorised for every offence for which penal servitude can be imposed under this Act.

Where a soldier sentenced to be reduced to the ranks was found not to have legally the grade of non-commissioned officer, and the court on revision passed a sentence of imprisonment, the imprisonment was held to commence on the date of the original sentence of reduction.

As to commencement on commutation, see note to s. 57.

MISCELLANEOUS.

Articles of War and Rules of Procedure.

69. It shall be lawful for Her Majesty to make Articles of War for the better government of officers and soldiers, and such Articles shall be judicially taken notice of by all judges and in all courts whatsoever : Provided that no person shall, by such Articles of War, be subject to suffer any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishment as aforesaid, or be subject, with reference to any crimes made punishable by this Act, to be punished in any manner which does not accord with the provisions of this Act.

Power of
Her Majesty
to make
Articles of
War.

Formerly, as is well known, military law was contained in the annual Mutiny Act and in Articles of War framed under its authority : see M.M.L., Chapter II.

70. (1.) Subject to the provisions of this Act Her Majesty may, by rules to be signified under the hand of a Secretary of State, from time to time make, and when made repeal, alter, or add to, provisions in respect of the following matters or any of them ; that is to say,

Power of
Her Majesty
to make
rules of
procedure.

- (a.) The assembly and procedure of courts of inquiry ;
- (b.) The convening and constituting of courts-martial ;
- (c.) The adjournment, dissolution, and sittings of courts-martial ;
- (d.) The procedure to be observed in trials by court-martial ;
- (e.) The confirmation and revision of the findings and sentences of courts-martial ; and enabling the authority having power under section fifty-seven of this Act to commute sentences to substitute a

Part I.

valid sentence for an invalid sentence of a court-martial ;

(*f.*) The carrying into effect sentences of courts-martial ;

(*g.*) The forms of orders to be made under the provisions of this Act relating to courts-martial, penal servitude, or imprisonment ;

(*h.*) Any matter in this Act directed to be prescribed ;

(*i.*) Any other matter or thing expedient or necessary for the purpose of carrying this Act into execution so far as relates to the investigation, trial, and punishment of offences triable or punishable by military law :

(2.) Provided always, that no such rules shall contain anything contrary to or inconsistent with the provisions of this Act.

(3.) All rules made in pursuance of this section shall be judicially noticed.

(4.) All rules made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.

The Rules of Procedure made under this section, and dated the 29th August, 1881, are printed below, p. 375.

Command.

Removal of doubts as to military command.

71. (1.) For the purpose of removing doubts as to the powers of command vested or to be vested in officers and others belonging to Her Majesty's forces, it is hereby declared that Her Majesty may, in such manner as to Her Majesty may from time to time seem meet, make regulations as to the persons to be invested as officers, or otherwise, with command over Her Majesty's forces, or any part thereof, or any person belonging thereto, and as to the mode in which such command is to be exercised ; provided

that command shall not be given to any person over a person superior in rank to himself.

(2.) Nothing in this section shall be deemed to be in derogation of any power otherwise vested in Her Majesty.

This section removes all doubts as to the power of Her Majesty to regulate the command by officers of the regular forces over such forces, or over any portion of the auxiliary forces, and the command by officers of any portion of the auxiliary forces over any other portion of those forces, or over any portion of the regular forces. The provisions of the Militia Acts relating to command, and those of the Volunteer Act which limited the command of officers of the regular forces over volunteers, and of Volunteer officers over any portion of the regular forces, have been repealed.

The proviso applies only to rank in relation to military command, and does not prevent an officer from having military command over an officer with higher relative rank, but no military command.

Inquiry as to and Confession of Desertion.

72. (1.) When any soldier has been absent without leave from his duty or a period of twenty-one days, a court of inquiry may as soon as practicable be assembled, and inquire in the prescribed manner on oath or solemn declaration (which such court is hereby authorised to administer) respecting the fact of such absence, and the deficiency (if any) in the arms, ammunition, equipments, instruments, regimental necessaries, or clothing of the soldier; and if satisfied of the fact of such soldier having absented himself without leave or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the absent soldier shall enter in the regimental books a record of the declaration of such court.

Inquiry by court on absence of soldier.

(2.) If the absent soldier does not afterwards surrender or is not apprehended, such record shall have the legal effect of a conviction by court-martial for desertion.

In the event of a soldier being absent without leave for a period exceeding 21 days, a court of inquiry must be assembled at once,
(A.M.L.)

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Part I. unless he has been taken into custody, Q.R., 1885, Sect. VI, para. 121. The procedure of such a court is detailed in Rule 124: under that Rule and this section the witnesses will be sworn, but not the members of the court.

Confession
by soldier of
desertion or
fraudulent
enlistment.

73. (1.) Where a soldier signs a confession that he has been guilty of desertion or of fraudulent enlistment a competent military authority may, by the order dispensing with his trial by a court-martial, or by any subsequent order, award the same forfeitures and the same deductions from pay (if any) as a court-martial could award for the said offence, or as are consequential upon conviction by a court-martial for the said offence, except such of them as may be mentioned in the order.

(2.) If upon any such confession, evidence of the truth or falsehood of such confession cannot then be conveniently obtained, the record of such confession, countersigned by the commanding officer of the soldier, shall be entered in the regimental books, and such soldier shall continue to do duty in the corps in which he may then be serving, or in any other corps to which he may be transferred, until he is discharged or transferred to the reserve, or until legal proof can be obtained of the truth or falsehood of such confession.

(3.) The competent military authority for the purposes of this section means the Commander-in-Chief or Adjutant-General, or, in the case of India, the Commander-in-Chief of the forces in India, or the Commander-in-Chief of the forces of any presidency in India, and in the case of a colony and elsewhere the general or other officer commanding the forces, subject in the case of India, or a colony, or elsewhere, to any directions given by the Commander-in-Chief.

Before accepting a confession of desertion or fraudulent enlistment signed by a soldier, care should be taken to ascertain that he fully understands the nature and consequences of his act.

He will forfeit the whole of his prior service, and be liable to serve for the original term of his enlistment reckoned from the date of his

trial being dispensed with: and the forfeited service can only be restored by the Secretary of State, s. 79 (2). **Part I.**

The deductions from pay are regulated by s. 138 and the Royal Warrant.

For definition of India and colony, see s. 190; and as to the Isle of Man and Channel Islands, see s. 187 (2).

See also Q.R., 1885, Sect. VI, paras. 148-153.

Provost-Marshal.

74. (1.) For the prompt repression of all offences which may be committed abroad, provost-marshals with assistants may from time to time be appointed by the general order of the general officer commanding a body of forces. **Provost-marshal.**

(2.) A provost-marshal or his assistants may at any time arrest and detain for trial persons subject to military law committing offences, and may also carry into execution any punishments to be inflicted in pursuance of a court-martial, but shall not inflict any punishment of his or their own authority.

The provost-marshal can only be appointed abroad, and will always be a commissioned officer, Q.R., 1885, Sect. VI, para. 116. He is under this Act merely an executive officer, without any authority to award punishment himself. He can, however, arrest and detain persons committing offences who are subject to military law, including therefore followers when on active service, and can apply on active service for their trial by court-martial. If the convening officer thinks it impracticable to try the case by an ordinary court-martial, he can convene a summary court-martial which can try the prisoner summarily, and inflict any punishment a general court-martial can inflict, whether on officers, soldiers, or followers. See s. 55. The provost-marshal and his assistants may carry into execution the sentence, when confirmed, of such court as well as of other courts-martial.

Restitution of Stolen Property.

75. (1.) Where a person has been convicted by court-martial of having stolen, embezzled; received, knowing it to be stolen, or otherwise unlawfully obtained, any property, and the property or any part thereof is found in the possession of the offender, the authority confirming the finding and sentence of such court-martial or the (A.M.L.) **Power as to restitution of stolen property.**

Part I. Commander-in-Chief, may order the property so found to be restored to the person appearing to be the lawful owner thereof.

(2.) A like order may be made with respect to any property found in the possession of such offender, which appears to the confirming authority or Commander-in-Chief to have been obtained by the conversion or exchange of any of the property stolen, embezzled, received, or unlawfully obtained.

(3.) Moreover where it appears to the confirming authority or Commander-in-Chief from the evidence given before the court-martial, that any part of the property stolen, embezzled, received, or unlawfully obtained was sold to or pawned with any person without any guilty knowledge on the part of the person purchasing or taking in pawn the property, the authority or Commander-in-Chief may, on the application of that person, and on the restitution of the said property to the owner thereof, order that out of the money (if any) found in the possession of the offender, a sum not exceeding the amount of the proceeds of the sale or pawning shall be paid to the said person purchasing or taking in pawn.

(4.) An order under this section shall not bar the right of any person, other than the offender, or any one claiming through him, to recover any property or money delivered or paid in pursuance of an order under this section from the person to whom the same is so delivered or paid.

The restoration under this section can only be made by order of the confirming authority, or of the Commander-in-Chief: and an order can only deal with property or money found in the possession of the offender himself; but where the offender occupies a house, property found in that house is *prima facie* in his possession.

The stealing or embezzlement of property does not alter the ownership, and therefore *prima facie* the person from whom property has been stolen or embezzled is the lawful owner of it.

Care must be taken to report in the United Kingdom to the Commander-in-Chief and elsewhere to the confirming officer any

circumstances which would justify him in making an order under **Part II.** this section.

PART II.

ENLISTMENT.

For history of service in the army, see M.M.L., Chapter IX, and for general explanation of this part, see M.M.L., Chapter X.

For regulations as to recruiting, transfers, discharge, and service, see Q.R., 1885, Sect. XIX.

Period of Service.

76. A person may be enlisted to serve Her Majesty as a soldier of the regular forces for a period of twelve years, or for such less period as may be from time to time fixed by Her Majesty, but not for any longer period, and the period for which a person enlists is in this Act referred to as the term of his original enlistment.

The terms of enlistment for the various arms of the service, and conditions of transfer, are prescribed by the Queen's Regulations, 1885.

77. The original enlistment of a person under this Act shall be as follows, either—

- (1.) For the whole of the term of his original enlistment in army service; or
- (2.) For such portion of the term of his original enlistment as may be from time to time fixed by a Secretary of State, and specified in the attestation paper, in army service, and for the residue of the said term in the reserve.

Sub-section (2). *The reserve.* This means the Army Reserve under the Reserve Forces Act, 1882. See 45 & 46 Vict. c. 48, s. 28.

Part II.
Change of
conditions of
service.

78. (1.) A Secretary of State may from time to time, by general or special regulations, vary the conditions of service, so as to permit a soldier of the regular forces in army service, with his assent, either—

- (a.) To enter the reserve at once for the residue unexpired of the term of his original enlistment; or
- (b.) To extend his army service for all or any part of the residue unexpired of such term; or
- (c.) To extend the term of his original enlistment up to the period of twelve years.

(2.) A Secretary of State may from time to time by general or special regulations vary the conditions of service so as to permit a man in the reserve, with his assent, to re-enter upon army service for all or any part of the residue unexpired of the term of his original enlistment, or for any period of time not exceeding twelve years in the whole from the date of his original enlistment.

The reserve. See note to last section.

As to a man entering the reserve before the time of his army service has expired, see s. 89.

This section applies to every soldier enlisted since the 9th of August, 1870. See s. 192.

Reckoning
and for-
feiture of
service.

79. In reckoning the service of a soldier of the regular forces for the purpose of discharge or of transfer to the reserve—

- (1.) The service shall begin to reckon from the date of his attestation; but
- (2.) Where a soldier of the regular forces has been guilty of any of the following offences :
 - (a.) Desertion from Her Majesty's service; or
 - (b.) Fraudulent enlistment;

then either upon his conviction by court-martial of the offence, or (if having confessed the offence, he is liable to be tried) upon his trial being dispensed with by order of the competent military authority, the whole of his prior service shall be forfeited, and he

shall be liable to serve as a soldier of the regular forces for the term of his original enlistment, reckoned from the date of such conviction or such order dispensing with trial, in like manner as if he had been originally attested at that date : Part II.

Provided that a Secretary of State may restore all or any part of the service forfeited under this section to any soldier who may perform good and faithful service, or may otherwise be deemed by such Secretary of State to merit such restoration of service, or may be recommended for such restoration of service by a court-martial.

Sub-section (2). A soldier will not forfeit service towards discharge for any absence or for any period of imprisonment, but if he is convicted of desertion or fraudulent enlistment he will forfeit all his prior service, and begin again as if he had enlisted at the date of his conviction. The Secretary of State, however, has power to restore all or part of the forfeited service to a soldier where either the soldier performs good and faithful service, or a court-martial recommends it.

The sub-section provides not only for forfeiture of service on conviction, but also in cases in which on the confession of the offender trial is dispensed with (see s. 73) by order of the competent military authority. The sub-section applies to the reckoning of service for purposes of discharge or transfer to the reserve only. Forfeiture of ordinary pay is dealt with in s. 138, while forfeiture of service towards good conduct pay or pension is regulated by the Royal Warrant.

If an army reserve man enlists and is sent back to the reserve, he does not forfeit any part of his service, but if retained with the colours, his service will be reckoned from the date of his improper attestation. See Q.R., 1885, Sect. XIX, para. 262.

If he is liable to be tried. These words exclude the application the sub-section in the case of a soldier who after three years of exemplary service has made a confession of desertion when not on active service, or of fraudulent enlistment. Under s. 161 a soldier making such a confession cannot be tried or punished, and it is not intended that he should forfeit his service under this section; but if the offence to which he confesses was that of fraudulent enlistment, he will under s. 161 forfeit all service prior to the date of his fraudulent enlistment, inasmuch as by such enlistment he has contracted to ignore that service and to serve

Part II — for the term in his new attestation; and he will be held to his new contract so to serve.

It must be recollected that the provisions of this section as to reckoning or forfeiture of service do not apply to soldiers enlisted or re-engaged before the commencement of the Army Discipline and Regulation Act, 1879, except with their own consent, and they remain subject to the old law regulating their service, that is to say,

- (i.) If the soldier enlisted and re-engaged before the 20th of June, 1867, he will be subject to the provisions of 10 & 11 Vict. c. 37, s. 8, and s. 55 of the Mutiny Act.
- (ii.) If he enlisted or re-engaged on or after the said 20th June, 1867, and before the commencement of the Army Discipline and Regulation Act, 1879, and has not since re-engaged, he will be subject to ss. 50 and 55 of the Mutiny Act.

But the service of any such soldier may, with his consent, and with the approval of the competent military authority (see s. 101), be reckoned from the date of his attestation without any deduction on account of his age, imprisonment, desertion, absence without leave, or otherwise; s. 192 (5).

Proceedings for Enlistment.

Mode of
enlistment
and attesta-
tion.

80. (1.) Every person authorised to enlist recruits in the regular forces (in this Act referred to as the "recruiter") shall give to every person offering to enlist a notice in the form for the time being authorised by a Secretary of State, stating the general requirements of attestation and the general conditions of the contract to be entered into by the recruit, and directing such person to appear before a justice of the peace at the time and place therein mentioned.

2.) Upon the appearance before a justice of the peace of a person offering to enlist, the justice shall ask him whether he assents to be enlisted, and shall not proceed with the enlistment if he considers the recruit under the influence of liquor.

(3.) If he does not appear before a justice, or on appearing does not assent to be enlisted, no further proceedings shall be taken.

(4.) If he assents to be enlisted—

Part II.

- (a.) The justice, after cautioning such person that if he makes any false answer to the questions read to him he will be liable to be punished as provided by this Act, shall read or cause to be read to him the questions set forth in the attestation paper for the time being authorised by a Secretary of State, and shall take care that such person understands each question so read, and after ascertaining that the answer of such person to each question has been duly recorded opposite the same in the attestation paper, shall require him to make and sign the declaration as to the truth of those answers set forth in the said paper, and shall then administer to him the oath of allegiance contained in the said paper :
- (b.) Upon signing the declaration and taking the oath, such person shall be deemed to be enlisted as a soldier of Her Majesty's regular forces :
- (c.) The justice shall attest by his signature, in manner required by the said paper, the fulfilment of the requirements as to attesting a recruit, and shall deliver the attestation paper, duly dated, to the recruiter :
- (d.) The fee for the attestation of a recruit, and for all acts and things incidental thereto, shall be one shilling and no more, and shall be paid to the clerk of the justice :
- (e.) The officer who finally approves of a recruit for service shall, at his request, furnish him with a certified copy of his attestation paper.

(5.) The date at which the recruit signs the declaration and takes the oath in this section in that behalf mentioned shall be deemed to be the date of the attestation of such recruit.

Part II. (6.) The competent military authority, if satisfied that there is any error in the attestation paper of a recruit, may cause the recruit to attend before some justice of the peace, and that justice, if satisfied that such error exists and is not so material as to render it just that the recruit should be discharged, may amend the error in the attestation paper, and the paper as amended shall the eupon be deemed as valid as if the matter of the amendment had formed part of the original matter of such paper.

(7.) Where the regulations of a Secretary of State under this part of this Act require duplicate attestation papers to be signed and attested, this section shall apply to both such duplicates, and in the event of any amendment of an attestation paper the amendment shall be made in both of the duplicate attestation papers.

A man is under this Act enlisted by the act of attestation; and the recruiter's gift of the shilling is no longer necessary. He will give the form, authorised by the Secretary of State, directing the recruit to appear before a justice. The man, if he fails to appear, cannot, as heretofore, be arrested as a deserter; and if he appears and dissents from his enlistment, he will not be liable to pay any smart money. No account will, therefore, be taken of any man before he is actually attested before a justice.

After such attestation a man can only get off his contract of enlistment by purchasing his discharge under s. 81 within three months afterwards on payment of a sum which at present is fixed at ten pounds. But discharge on this payment is a matter of right not of favour, unless it is claimed during a period when the reserves are called out (see s. 88). See s. 81.

The attestation is required to be in duplicate, Q.R., 1885, Sect. XXII, para. 10.

Competent military authority. See definition in s. 101. Rule 127 adds to the definition for the purposes of this section the commanding officer of the soldier, and every officer superior in command to that commanding officer.

Power of
recruit to
purchase
discharge.

81. If a recruit within three months after the date of his attestation pays for the use of Her Majesty a sum not exceeding ten pounds, he shall be discharged with all convenient speed, unless he claims such discharge during a period when soldiers in army service who otherwise would

be transferred to the reserve are required by a proclamation of Her Majesty in pursuance of this Act to continue in army service, in which case he may be retained in Her Majesty's service during that period, and at the termination thereof shall, if he so require it, on the payment then of the said sum, be discharged.

Part II,

Appointment to Corps and Transfers.

82. (1.) Recruits may, in pursuance of any general or special regulations from time to time made by a Secretary of State, be enlisted for service in particular corps of the regular forces, but save as is provided by such regulations, if any, recruits shall be enlisted for general service.

Enlistment for general service and appointment to corps.

(2.) The competent military authority shall as soon as practicable appoint a recruit, if enlisted for service in a particular corps, to that corps, and if enlisted for general service, to some corps of the regular forces.

Sub-section (2). *Appoint.* The words "appoint" and "transfer" are used in this Act in the following senses. A soldier on attestation is appointed to the corps out of which he cannot be moved without his consent, except as mentioned in the Act. This appointment differs from the appointment of a soldier to a particular office, inasmuch as it does not, like the latter appointment, require the consent of the soldier.

Any disposition of a soldier within his corps which can be legally effected independently of his consent is termed posting.

- (a.) In the case of infantry, a soldier may be posted to a battalion of his territorial or other regiment, or to the permanent staff of any volunteers belonging to that regiment.
- (b.) In the case of artillery, the soldier may be posted to any brigade or battery;
- (c.) In the case of engineers, he may be posted to any troop or company;
- (d.) In the case of other corps to any company or station according to their respective sub-divisions.

"Transfer" is a disposition of the soldier which moves him out of the corps to which he was originally appointed, or to which, for the time being, he belongs, either with his consent or under special conditions provided by the Act.

Part II. Thus if a soldier is moved—

- (a.) In the case of infantry, out of his territorial regiment to any other regiment or to any other corps; or
- (b.) In the case of artillery or engineers, out of the artillery or engineers to another corps; or
- (c.) In the case of any other corps, out of his corps into any body outside his corps,

he will be transferred.

“Attach” means removing temporarily a soldier either with or without his consent from a corps and placing him with another corps, without affecting in any way his status in the first-mentioned corps.

Competent military authority. See definition in s. 101. Rule 127 adds to the definition for the purposes of this section the commanding officer of the soldier, and every officer superior in command to that commanding officer.

Effect of
appointment
to a corps
and provi-
sion for
transfers.

83. A soldier of the regular forces, whether enlisted for general service or not, when once appointed to a corps, shall serve in that corps for the period of his army service, whether during the term of his original enlistment or during the period of such re-engagement as is in this Act mentioned, unless transferred under the following provisions :

(1.) A soldier of the regular forces enlisted for general service may, within three months after the date of his attestation, be transferred to any corps of the regular forces of the same arm or branch of the service by order of the competent military authority.

(2.) A soldier of the regular forces may at any time with his own consent be transferred by order of the competent military authority to any corps of the regular forces.

(3.) Where a soldier of the regular forces is in pursuance of any of the foregoing provisions transferred to a corps in an arm or branch different from that in which he was previously serving, the competent military authority may by order vary the conditions of his service so as to correspond with the general conditions of service in the arm or branch to which he is transferred.

(4.) A soldier of the regular forces in any branch of the

service may be transferred by order of the competent military authority to any corps of the same branch which is serving in the United Kingdom in either of the following cases—

- (a.) when he has been invalided from service beyond the seas; or
- (b.) when, in the case of his corps or the part thereof in which he is serving being ordered on service beyond the seas, he is either unfit for such service by reason of his health, or is within two years from the end either of the period of his army service in the term of his original enlistment or of such re-engagement as is in this Act mentioned.

(5.) Where a soldier of the regular forces in any branch of the service, who was enlisted to serve part of the term of his original enlistment in the reserve, and has not extended his army service for the whole of that time, is on service beyond the seas, and at the time of his corps or the part thereof in which he is serving being ordered to another station or to return home, has more than two years of his army service in the term of his original enlistment unexpired, he may be transferred by order of the competent military authority to any corps of the same branch which or a part of which is on service beyond the seas.

(6.) Where a soldier of the regular forces has been transferred to serve, either as a warrant officer not holding an honorary commission, or in the corps of armourer serjeants, or in the army hospital corps, or in the army service corps, or on the staff, or in the corps of mounted military police, or in any corps not being a corps of infantry, cavalry, artillery, or engineers, he may by order of the competent military authority, either during the term of his original enlistment or during the period of his re-engagement, be removed from such service and trans-

Part II, referred to any corps of the regular forces serving in the United Kingdom, or to any corps of the regular forces serving on the station beyond the seas on which he is serving at the time of his removal, or to the corps of the regular forces in which he was serving prior to such first-mentioned transfer, either in the rank he holds at the time of his removal or any lower rank.

(7.) Where a soldier of the regular forces—

(a.) Has been guilty of the offence of desertion from Her Majesty's service or of fraudulent enlistment, and has either been convicted of the same by a court-martial, or having confessed the offence, is liable to be tried, but his trial has been dispensed with by order of the competent military authority; or

(b.) Has been sentenced by a court-martial for any offence to a punishment not less than imprisonment for a term of six months;

such soldier shall be liable, in commutation wholly or partly of other punishment, to general service, and may from time to time be transferred to such corps of the regular forces as the competent military authority may from time to time order.

(8.) A soldier of the regular forces delivered into military custody or committed by a court of summary jurisdiction in any part of Her Majesty's dominions as a deserter shall be liable to be transferred by order of the competent military authority to any corps of the regular forces near to the place where he is delivered or committed, or to any other corps to which the competent military authority think it desirable to transfer him, and to serve in the corps to which he is transferred without prejudice to his subsequent trial and punishment.

This section applies to all soldiers, except that sub-sections (4) and (5) do not apply to any soldier who enlisted between 20th

June, 1867, and 9th August, 1870, and has not re-engaged; s. 192 Part II.
(1) (7).

Appointed—transferred, see note on s. 82.

Sub-section (1). The transfer during these three months does not require the consent of the soldier. During those three months he is entitled to his discharge under s. 81 on proper demand and payment.

Sub-section (3). *Vary the conditions of his service.* This is to provide for such a case as the transfer of a man from the infantry to the cavalry. The time of service in the cavalry is usually longer than in the infantry, and it may be necessary consequently to lengthen the army service of the man transferred.

Sub-sections (4) and (5). *Or the part thereof in which he is serving.* These words are inserted in consequence of "corps" meaning an infantry territorial regiment, part of which may be serving in and the other part out of the United Kingdom. It will therefore apply to the case where the battalion in which the man is serving is ordered abroad.

Sub-section (7). *Is liable to be tried.* These words will relieve from the operation of this sub-section a soldier who, though having confessed an offence, is exempted by s. 161 from trial and punishment. The liability to general service is a commutation of punishment which may be allowed by the "competent military authority," and is not a punishment which a court-martial can award. Consequently it is not within the powers of mitigation and commutation given to confirming and other officers by s. 57. But in the case of an offence other than desertion or fraudulent enlistment, the liability arises only when the sentence awarded by the court-martial is not less than six months' imprisonment. An order passed under this sub-section will be entered in the soldier's record of service, Q.R., 1885, Sect. VI, para. 113.

Competent military authority is defined in s. 101. Rule 127 adds to the definition for the purpose of a transfer by consent under sub-section (2) of this section, the General commanding the forces in Ireland, and the General commanding a military district in the United Kingdom.

See generally as to transfers, Q.R., 1885, Sect. XIX, Part III.

Re-engagement and Prolongation of Service.

84. (1.) Subject to any general or special regulations from time to time made by the Secretary of State, a soldier of the regular forces, if in army service and after the expiration of nine years from the date of his original term of enlistment may, on the recommendation of his

Re-engagement of soldiers.

Part II. — commanding officer, and with the approval of the competent military authority, be re-engaged for such further period of army service as will make up a total continuous period of twenty-one years' army service, reckoned from the date of his attestation, and inclusive of any period previously served in the reserve.

(2.) A soldier of the regular forces during his period of re-engagement shall be liable to forfeit his previous service during such period of re-engagement in like manner as he is liable under this part of this Act during the term of his original enlistment.

(3.) A soldier of the regular forces who so re-engages shall make before his commanding officer a declaration in accordance with the said regulations.

Sub-section (1). *Competent military authority* is defined in s. 101. Rule 127 adds to the definition for the purposes of this section the commanding officer of the soldier, and every officer superior in command to that commanding officer.

This section applies to all soldiers, at whatever time they enlisted. Section 192 (2).

A soldier enlisted before the commencement of the Act becomes, on re-engagement, subject in all respects to the provisions of the Act. *Ib.* (4).

Continuance
in service
after twenty-
one years
service.

85. A soldier of the regular forces who has completed, or will within one year complete, a total period of twenty-one years' service, inclusive of any period served in the reserve, may give notice to his commanding officer of his desire to continue in Her Majesty's service in the regular forces; and if the competent military authority approve, he may be continued as a soldier of the regular forces in the same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged.

Inclusive of any period served in the reserve. This meets the case where a man has been transferred to the reserve, and after staying a time in the reserve has either been called out and re-

engaged, or has volunteered to serve again with the colours and has re-engaged. **Part II.**

Competent military authority. See definition in s. 101. Rule 127 adds to the definition for the purposes of this section the commanding officer of the soldier, and every officer superior in command to that commanding officer. See Q.R., 1885, Sect. XIX, paras. 80-85A.

This section applies to all soldiers at whatever time they enlisted. Section 192 (1).

§. Soldiers who gave notice to continue their service were formerly assumed to remain under the Act to which they were subject at the time they gave the notice, but every soldier who gives such notice after the commencement of this Act will be considered to have consented to the application to him of the whole of the provisions of Part II of this Act. Section 192 (4).

86. The regulations from time to time made in pursuance of this part of this Act may, if it seems expedient, provide that a non-commissioned officer of the regular forces who extends his army service for the residue unexpired of his original term of enlistment shall have the right at his option to re-engage under section eighty-four, and to continue his service under section eighty-five of this Act, or to do either of such things, subject nevertheless to the veto of the Secretary of State or other authority mentioned in the regulations, and to such other conditions as are specified in the regulations.

Re-engagement and continuance of service of non-commissioned officers.

The object of this section is to enable regulations to be made by which a non-commissioned officer, who agrees to extend his army service for the whole of his twelve years, may have the right to treat the army as his profession for life, and if he makes himself efficient and conducts himself properly, to continue in the army until he has earned a pension. For the regulations under this section, see Q.R., 1885, Sect. XIX, paras. 78-85A.

87. (1.) Where the time at which a soldier of the regular forces would otherwise be entitled to be discharged occurs while a state of war exists between Her Majesty and any foreign Power, or while such soldier is on service beyond the seas, or while soldiers in the reserve are required by a proclamation in pursuance of the enactments relating to the calling out of the reserve on per-

Prolongation of service in certain cases.

Part II. manent service to continue in or re-enter upon army service, the soldier may be detained, and his service may be prolonged for such further period, not exceeding twelve months, as the competent military authority may order; but at the expiration of that period, or any earlier period at which the competent military authority considers his services can be dispensed with, the soldier shall as provided by this Act be discharged with all convenient speed.

(2.) Where the time at which a soldier of the regular forces would otherwise be entitled to be transferred to the reserve occurs while a state of war exists between Her Majesty and any foreign Power, the soldier may be detained in army service for such further period, not exceeding twelve months, as the competent military authority may order, but at the expiration of that period, or any earlier period at which the competent military authority consider his services can be dispensed with, the soldier shall, with all convenient speed, be sent to the United Kingdom for the purpose of being transferred to the reserve.

(3.) If a soldier required under this section to be discharged or sent to the United Kingdom desires, while a state of war exists between Her Majesty and any foreign Power, to continue in Her Majesty's service, and the competent military authority approve, he may agree to continue as a soldier of the regular forces in the same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the end of such state of war, or, if it is so provided by such agreement, at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged.

(4.) A soldier who so agrees to continue shall make before his commanding officer a declaration in accordance with any general or special regulations from time to time made by a Secretary of State.

This section applies to all soldiers with the following modifications—that an old soldier, as defined by s. 192 (2), cannot be detained in service or have his service prolonged without his consent further or otherwise than he would have been liable to if the Army Act had not passed, s. 192 (6). Consequently a soldier enlisted before the commencement of the Army Act, 1879, who has not since re-engaged, cannot be detained in service merely because a proclamation has called out the reserves. Again, a soldier who enlisted or re-engaged before the 9th August, 1870, and has not since re-engaged, cannot be detained in service merely because a state of war exists. On the other hand, a man enlisted under the Act of 1879 may be detained for an additional twelve months when on service beyond the seas, s. 192 (1). A soldier who enlisted or re-engaged before the 20th June, 1867, can be detained for two years.

Competent military authority, see s. 101, and Rule 127.

Sub-section (1). *Required by proclamation, &c.* The occasion must be one of imminent national danger or great emergency. See s. 88, and Reserve Forces Act, 1882, s. 12 (4).

Sub-section (3). This enables a man who is entitled to be discharged or transferred to the reserve to volunteer for service during the war without re-engaging for a period of eight or nine years' service.

Sub-section (4). See Q.R., 1885, Sect. XIX, para. 75.

88. (1.) It shall be lawful for Her Majesty in Council in case of imminent national danger or of great emergency, by proclamation, the occasion being first communicated to Parliament if Parliament be then sitting, or if Parliament be not then sitting, declared by the proclamation, to order that the soldiers who would otherwise be entitled in pursuance of the terms of their enlistment to be transferred to the reserve shall continue in army service.

In imminent national danger Her Majesty may continue soldiers in army service or call out for permanent service.

(2.) It shall be lawful for Her Majesty by any such proclamation to order a Secretary of State from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for causing all or any of the soldiers mentioned in the proclamation to continue in army service.

(3.) Every soldier for the time being required by, or in pursuance of, such directions to continue in army service

Part II. shall continue to serve in army service for the same period for which he might be required to serve, if he had been transferred to the reserve, and called out for permanent service by a proclamation of Her Majesty under the enactments relating to the reserve.

(4.) Any man who has entered the reserve in pursuance of the terms of his enlistment may be called out for permanent service by a proclamation of Her Majesty under the enactments relating to the calling out of the reserve on permanent service.

This section applies to all soldiers who have at any time been enlisted to serve part of their time in the reserve. The effect of the Reserve Forces Act, 1882, s. 14, and s. 192 of this Act, appears to be that all men in the reserve may be required to serve for a further period of twelve months under the circumstances under which a soldier may be detained in service under s. 87.

The proclamation calling out the reserve may be made under the Reserve Forces Act, 1882, in case of imminent national danger or of great emergency.

Discharge and Transfer to Reserve Force.

Transfer of
soldier to
reserve when
corps
ordered
abroad.

89. In the following cases ; that is to say,

- (1.) Where a soldier of the regular forces has been invalided from service beyond the seas ; or
- (2.) Where a corps to which a soldier of the regular forces belongs, or the part thereof in which he is serving, is ordered on service beyond the seas, and the soldier is either unfit for such service by reason of his health, or is within two years of the end of the period of his army service in the term of his original enlistment ;

the competent military authority may by order transfer him to the reserve in like manner as if the period of his actual service were specified in his attestation paper as the portion of the term of his original enlistment which was to be spent in army service.

Competent military authority, see definition, s. 101, and Rule 127.

This section does not apply, without his consent, to any soldier who enlisted before the commencement of the Army Discipline and Regulation Act, 1879, s. 192 (3); see also sub-section (4).

Part II.
—

90. (1.) Save as otherwise provided by this Act or the Acts relating to the reserve forces, every soldier of the regular forces upon the completion of the term of his original enlistment, or of the period of his re-engagement, shall be discharged with all convenient speed, but until so discharged shall be subject to this Act as a soldier of the regular forces.

Discharge or
transfer to
reserve.

(2.) Where a soldier of the regular forces enlisted in the United Kingdom is, when entitled to be discharged, serving beyond the seas, he shall, if he so requires, be sent to the United Kingdom, and in such case shall, with all convenient speed, be sent there free of expense, and on his arrival be discharged. If such soldier is permitted, at his request, to stay at the place where he is serving, he shall not afterwards have any claim to be sent at the public expense to the United Kingdom or elsewhere.

(3.) Every soldier of the regular forces upon the completion of the period of his army service, if shorter than the term of his original enlistment, shall be transferred to the reserve, but until so transferred shall be subject to this Act as a soldier of the regular forces.

(4.) Where a soldier of the regular forces, when entitled to be transferred to the reserve, is serving beyond the seas, he shall be sent to the United Kingdom free of expense with all convenient speed, and on his arrival shall be transferred to the reserve.

(5.) A soldier of the regular forces who is discharged on the completion of the term of his original enlistment or his re-engagement, as mentioned in the second sub-section of this section, or is transferred to the reserve, shall be entitled to be conveyed free of cost from the place in the United Kingdom where he is discharged or transferred to the place in which he appears from his attestation paper to have been attested, or to any place at which he may at

Part II. the time of his discharge or transfer decide to take up his residence, and to which he can be conveyed without greater cost.

Sub-section (1). *Save as otherwise provided.* Section 87 provides for the temporary detention of a man entitled to discharge. Section 158 gives power to detain for trial a man charged with an offence under this Act, though entitled to his discharge or transfer to the reserve. As to time of discharge, see s. 92.

As to postponement of transfer to the reserve, see s. 87.

This section applies to all soldiers whenever enlisted, s. 192 (2).

Delivery of lunatic soldier on discharge with his wife or child at workhouse, or of dangerous lunatic at asylum.

91. (1.) A Secretary of State may, if he thinks proper, on account of a soldier's lunacy, cause any soldier of the regular forces on his discharge, and his wife and child, or any of them, to be sent to the parish or union to which under the statutes for the time being in force he appears, from the statements made in his attestation paper and other available information to be chargeable; and such soldier, wife, or child, if delivered after reasonable notice, in England or Ireland at the workhouse in which persons settled in such parish or union are received, and in Scotland to the inspector of poor of such parish, shall be received by the master or other proper officer of such workhouse or such inspector of poor, as the case may be:

(2.) Provided that a Secretary of State, where it appears to him that any such soldier is a dangerous lunatic, and is in such a state of health as not to be liable to suffer bodily or mental injury by his removal, may, by order signified under his hand, or under the hand of an under-secretary, send such lunatic direct to an asylum, registered hospital, licensed house or other place in which pauper lunatics can legally be confined; and for the purpose of the said order the above-mentioned parish or union shall be deemed to be the parish or union from which such lunatic is sent.

(3.) In England the lunatic shall be sent to the asylum, hospital, house, or place to which a person in the workhouse aforesaid, on becoming a dangerous lunatic, can by

law be removed ; and an order of the Secretary of State under this section shall be of the same effect as an order by a justice within the meaning of section seventy-two of the Act of the session of the sixteenth and seventeenth years of the reign of Her present Majesty, chapter ninety-seven, intituled "An Act to consolidate and amend the laws for the provision and regulation of lunatic asylums for counties and boroughs, and for the maintenance and care of pauper lunatics in England," and shall be subject accordingly to the provisions of that section.

(4.) The Secretary of State, before making the said order in respect of a lunatic who is liable to be delivered to the inspector of poor of a parish in Scotland, may require the inspector of poor of that parish to specify the asylum to which such lunatic if in the parish would be sent, and it shall be the duty of such inspector forthwith to specify such asylum, and thereupon the Secretary of State may make the said order for sending the lunatic to that asylum ; and such order shall be of the same effect as an order by the sheriff within the meaning of section eighty-five of the Act of the session of the twentieth and twenty-first years of the reign of Her present Majesty, chapter seventy-one, intituled "An Act for the regulation of, and care and treatment of lunatics, and for the provision, maintenance, and regulation of lunatic asylums in Scotland," and shall be subject accordingly to the provisions of that section.

(5.) In the case of any such lunatic who is liable to be delivered at a workhouse in Ireland at which persons settled in the said union are received, a Secretary of State may, by order under his hand, send such soldier to the asylum of the district in which such union is situate ; and such order shall be of the same effect as a warrant under the hands and seals of two justices given under the provisions of the tenth section of the Act of the session of the thirtieth and thirty-first years of the reign of Her

Part II. present Majesty, chapter 118, intituled "An Act to
 — "provide for the appointment of the officers and servants
 "of district lunatic asylums in Ireland, and to alter and
 "amend the law relating to the custody of dangerous
 "lunatics and dangerous idiots in Ireland."

This section allows a Secretary of State to send a lunatic soldier to the workhouse of the union to which, according to the statements in his attestation paper and other available information, he appears to be chargeable. If the Secretary of State considers the soldier to be a dangerous lunatic, he may order him to be removed direct to the asylum to which the lunatic could be removed if he had been first removed to the workhouse; i.e., in England, to the county or borough asylum.

This section applies to all soldiers whenever enlisted, s. 192 (2).

Soldier in sub-section (5) seems to be a misprint for lunatic.

Regulations
 as to dis-
 charge of
 soldiers.

92. (1.) A soldier of the regular forces shall not be discharged from those forces, unless by sentence of court-martial with ignominy, or by order of the competent military authority, or by authority direct from Her Majesty, and until duly discharged in manner provided by this Act and by regulations of the Secretary of State under this Act shall be subject to this Act.

(2.) To every soldier of the regular forces who is discharged, for whatever reason he is discharged, there shall be given a certificate of discharge, stating his service, conduct, and character, and the cause of his discharge.

The terms of the attestation of a soldier bind him to serve so long as his services are required. Consequently the Crown has always a right to discharge him if his services are not required. Before a soldier is discharged his service, conduct, character, and the cause of his discharge are recorded on his attestation paper; and a parchment certificate of discharge is given to him so as to prevent his suffering any inconvenience on suspicion of being a deserter or otherwise.

Until the formalities of the discharge are completed a soldier remains subject to military law; but any undue delay of the discharge would give good ground for complaint on the part of the soldier.

In practice the parchment certificate of discharge also contains a full description of the man discharged and other particulars. It

is signed by the commanding officer. See M.M.L., Chapter X, Part II. para. 30, Q.R., 1885, Sect. XIX, Part IV.

This section applies to all soldiers whenever enlisted, s. 192 (2).

Authorities to enlist and attest Recruits.

93. A Secretary of State may from time to time make Regulations as to persons and when made revoke and alter, a general or special to enlist and enlistment of order, making such regulations, giving such directions, and soldiers. and issuing such forms as he may think necessary or expedient, respecting the persons authorised to enlist recruits for Her Majesty's regular forces, and for the purpose of such enlistment, and generally for carrying this part of this Act into effect; and any such order shall be of the same effect as if enacted in this Act.

See Q.R., 1885, Sect. XIX, Part I.

94. For the purposes of the attestation of soldiers in Justices of the peace for the purposes of enlistment. pursuance of this part of this Act :—

An officer in the United Kingdom or elsewhere, if authorised in that behalf under the regulations of a Secretary of State, also every person exercising the office of a magistrate in India or a colony, and also each of the following persons, shall have the authority of a justice of the peace and be deemed to be included in the expression "justice of the peace" wherever used in this part of this Act in relation to the attestation of soldiers; that is to say,

In India, any person duly authorised in that behalf by the Governor-General; and in the territories of any native state in India, the person performing the duties of the office of British resident or political agent therein, or any other person authorised in that behalf by the Governor-General of India; and

In a colony, any person duly authorised in that behalf by the governor of the colony; and

Part II.

Beyond the limits of the United Kingdom, India, and a colony, any British consul-general, consul, or vice-consul, or person duly exercising the authority of a British consul.

It must be recollected that a justice of the peace can, in most cases, only act when within the county or borough for which he is justice.

The persons named in this section will have authority to attest, but not to enlist or re-engage soldiers, so that consuls, who were formerly authorised by the Mutiny Act to enlist soldiers, will no longer have that power, unless expressly authorised by order of the Secretary of State under the last section.

The officers authorised to attest recruits are specified in Q.R., 1885, Sect. XIX, para. 47.

In Ireland a man is not to be taken for attestation before a magistrate appointed under the Town Improvement Act.

For definitions of India and colony, see s. 190 (21) (23).

Special provisions as to Persons to be Enlisted.

Enlistment
of aliens,
negroes, &c.

95. (1.) Any person who is for the time being an alien may, if Her Majesty think fit to signify her consent through a Secretary of State, be enlisted in Her Majesty's regular forces, so however, that the number of aliens serving together at any one time in any corps of the regular forces shall not exceed the proportion of one alien to every fifty British subjects, and that an alien so enlisted shall not be capable of holding any higher rank in Her Majesty's regular forces than that of a warrant officer or non-commissioned officer :

(2.) Provided that, notwithstanding the above provisions of this section, any negro or person of colour, although an alien, may voluntarily enlist in pursuance of this part of this Act, and when so enlisted, shall, while serving in Her Majesty's regular forces, be deemed to be entitled to all the privileges of a natural-born British subject.

See M.M.L., Chapter X, paras. 27, 28.

The proviso to this section enables negroes and persons of

colour although aliens to be enlisted without any restriction in point of number, as if they were natural-born British subjects. Part II.

This section will apply to all persons enlisted under the enactments which are replaced by this section.

96. The master of an apprentice in the United Kingdom who has been attested as a soldier of the regular forces may claim him while under the age of twenty-one years as follows, and not otherwise : Claims of masters to apprentices.

- (1.) The master, within one month after the apprentice left his service, must take before a justice of the peace the oath in that behalf specified in the First Schedule to this Act, and obtain from the justice a certificate of having taken such oath, which certificate the justice shall give in the form in the said schedule, or to the like effect :
- (2.) A court of summary jurisdiction within whose jurisdiction the apprentice may be, if satisfied on complaint by the master that he is entitled to have the apprentice delivered up to him, may order the officer under whose command the apprentice is to deliver him to the master, but if satisfied that the apprentice stated on his attestation that he was not an apprentice may, and if required by or on behalf of the said commanding officer shall, try the apprentice for the offence of making such false statement, and if need be may adjourn the case for the purpose :
- (3.) Except in pursuance of an order of a court of summary jurisdiction, an apprentice shall not be taken from Her Majesty's service :
- (4.) An apprentice shall not be claimed in pursuance of this section unless he was bound for at least four years by a regular indenture, and was under the age of sixteen years when so bound :
- (5.) A master who gives up the indenture of his apprentice within one month after the attestation

Part II.

of such apprentice shall be entitled to receive to his own use so much of the bounty (if any) payable to such apprentice on enlistment as has not been paid to the apprentice before notice was given of his being an apprentice.

Court of summary jurisdiction. See ss. 166-169 and 190 (34)-(36).

Application of apprentice provisions to indentured labourers.

97. The provisions of this part of this Act with respect to apprentices shall apply to a person who at the time of his attestation is an indentured labourer in a colony, with these qualifications, that such indentured labourer, if imported at the expense of the employer or of the colony in consideration of the indenture under which he is serving, may be claimed although above the age of twenty-one years, and though bound for a less period or at an older age than is above specified.

For definition of colony, see s. 190 (23).

Offences as to Enlistment.

Penalty on unlawful recruiting.

98. If a person without due authority—

- (1.) Publishes or causes to be published notices or advertisements for the purpose of procuring recruits for Her Majesty's regular forces, or in relation to recruits for such forces ; or
- (2.) Opens or keeps any house, place of rendezvous, or office as connected with the recruiting of such forces ; or
- (3.) Receives any person under any such advertisement as aforesaid ; or
- (4.) Directly or indirectly interferes with the recruiting service of such forces ;

he shall be liable on summary conviction to a fine not exceeding twenty pounds.

On summary conviction, i.e., before magistrates, see ss. 166-169.

Recruits

99. (1.) If a person knowingly makes a false answer to

any question contained in the attestation paper, which has been put to him by or by direction of the justice before whom he appears for the purpose of being attested, he shall be liable on summary conviction to be imprisoned with or without hard labour for any period not exceeding three months.

Part II.
punishable
for false
answers.

(2.) If a person guilty of an offence under this section has been attested as a soldier of the regular forces, he shall be liable, at the discretion of the competent military authority, to be proceeded against before a court of summary jurisdiction, or to be tried by court-martial for the offence.

Sub-section (1). *On summary conviction, i.e., before magistrates, see ss. 166—169.*

Sub-section (2). The offender may be tried and punished in any place where he may for the time being happen to be (s. 159, as to courts-martial, and s. 166 as to civil courts of summary jurisdiction), as well as in the place where the offence was committed; that is to say, where he made the false answer.

Court of summary jurisdiction. See definition in s. 190 (35).

Competent military authority. See definition in s. 101. Rule 127 adds to the definition for the purposes of this section any officer having power to convene a district court-martial for the trial of the soldier.

This section extends to every soldier whenever enlisted, s. 192 (2).

Miscellaneous as to Enlistment.

100. (1.) Where a person after his attestation on his enlistment, or the making of his declaration on re-engagement, has received pay as a soldier of the regular forces during three months, he shall be deemed to have been duly attested and enlisted or duly re-engaged, as the case may be, and shall not be entitled to claim his discharge on the ground of any error or illegality in his enlistment, attestation, or re-engagement, or on any other ground whatsoever, save as authorised by this Act; and, if within the said three months such person claims his discharge, any such error or illegality or other ground shall not until

Validity of
attestation
and enlist-
ment or re-
engagement.

Part II. such person is discharged in pursuance of his claim affect his position as a soldier in Her Majesty's service, or invalidate any proceedings act or thing taken or done prior to such discharge.

- (2.) Where a person is in pay as a soldier in any corps of Her Majesty's regular forces, such person shall be deemed for all the purposes of this Act to be a soldier of the regular forces, with this qualification, that he may at any time claim his discharge, but until he so claims and is discharged in pursuance of that claim he shall be subject to this Act as a soldier of the regular forces legally enlisted and duly attested under this Act.

(3.) Where a person claims his discharge on the ground that he has not been attested or re-engaged or not duly attested or re-engaged, his commanding officer shall forthwith forward such claim to the competent military authority, who shall as soon as practicable submit it to a Secretary of State, and if the claim appears well grounded the claimant shall be discharged with all convenient speed.

Sub-section (2). This meets the case of a man who has been receiving pay without ever having been legally attested or engaged. Such a case should but seldom arise under the present law and practice of enlistment, but if it should (as e.g., if an alien has by making a false answer been enlisted without due authority), the above enactment will effectually prevent a man who has actually served from suddenly repudiating his liability to the rules of the service, and thus evading punishment when charged with or punished for an offence.

Competent military authority. See definition in section 101, and Rule 127.

This section extends to every soldier whenever enlisted, s. 192.

Definition
for purposes
of Part II
of competent
military
authority
and reserve.

101. (1.) Any act or thing authorised or required by this part of this Act to be done by, to, or before the competent military authority may be done by, to, or before the Commander-in-Chief or the Adjutant-General, or any officer prescribed in that behalf.

(2.) For the purposes of this part of this Act the

expression "reserve" means the first class of the army Part II. reserve force.

Prescribed. See Rule 127, which prescribes for the purposes of this Part of the Act, in addition to the Commander-in-Chief and Adjutant-General, the following officers, namely:—

- (1.) In India, the Commander-in-Chief of the forces in India, and the Commander-in-Chief of the forces in any presidency in India.
- (2.) In any place situate out of India and out of the United Kingdom, the General or other officer commanding the forces in such place.
- (3.) Also any such officer as may be directed from time to time by Her Majesty's regulations to perform in any place, or for any purpose specified in that behalf, the duty of the competent military authority.

For the purposes of particular sections in this Part, and of transfer by consent, Rule 127 also prescribes other officers.

Army reserve force, i.e., the army reserve under the Reserve Forces Act, 1882, 45 & 46 Vict., c. 48, s. 28.

PART III.

Part III.

BILLETING AND IMPRESSMENT OF CARRIAGES.

See M.M.L., Chapter IX, paras. 114-128. This part relates only to the United Kingdom.

Billeting of Officers and Soldiers.

102. During the continuance in force of this Act, so much of any law as prohibits, restricts, or regulates the quartering or billeting of officers and soldiers on any inhabitant of this realm without his consent is hereby suspended, so far as such quartering or billeting is authorised by this Act.

Suspension of 3 Chas. I, c. 1; 31 Chas. II, c. 1; 6 Anne (I), c. 14, as to billeting.

Part III. The Acts suspended by this section are in the case of England and Ireland those referred to in the marginal note to this section.

Obligation of constable to provide billets for officers, soldiers, and horses.

103. (1.) Every constable for the time being in charge at any place in the United Kingdom mentioned in the route issued to the commanding officer of any portion of Her Majesty's regular forces shall, on the demand of such commanding officer, or of an officer or soldier authorised by him, and on production of such route, billet on the occupiers of victualling houses and other premises specified in this Act as victualling houses in that place such number of officers, soldiers, and horses entitled under this Act to be billeted as are mentioned in the route and stated to require quarters.

(2.) A route for the purposes of this part of this Act shall be issued under the authority of Her Majesty, signified through a Secretary of State, and shall state the forces to be moved in pursuance of the route, and that statement shall be signed by such officer as the Commander-in-Chief may from time to time order in that behalf.

(3.) A route purporting to be issued and signed as required by this section shall be evidence until the contrary is proved of its having been duly issued and signed in pursuance of this Act, and if delivered to an officer or soldier by his commanding officer shall be a sufficient authority to such officer or soldier to demand billets, and when produced by an officer or soldier to a constable shall be conclusive evidence to such constable of the authority of the soldier or officer producing the same to demand billets in accordance with such route.

Sub-section (1). *Constable*, see s. 120, and note.

Sub-section (3). This sub-section provides that a route shall, so to speak, prove itself, i.e., that it is not to be questioned except on evidence produced to show that it has not been duly issued or signed.

The necessary modifications in the application of this section to the auxiliary forces are provided in s. 181 (3) (4).

Liability to 104. (1.) The provisions of this part of this Act with

respect to victualling houses shall extend to all inns, hotels, livery stables, or alehouses, also to the houses of sellers of wine by retail, whether British or foreign, to be drunk in their own houses or places thereunto belonging, and to all houses of persons selling brandy, spirits, strong waters, cider, or metheglin by retail; and the occupier of a victualling house, inn, hotel, livery stable, alehouse, or any such house as aforesaid shall be subject to billets under this Act, and is in this Act included under the expression "keeper of a victualling house," and the inn, hotel, house, stables, and premises of such occupier are in this Act included under the expression "victualling house."

Part III.
provide
billets.

(2.) Provided that an officer or soldier shall not be billeted—

- (a.) In any private house; nor
- (b.) In any canteen held or occupied under the authority of a Secretary of State; nor
- (c.) On persons who keep taverns only, being vintners of the City of London admitted to their freedom of the said company in right of patrimony or apprenticeship, notwithstanding the persons who keep such taverns have taken out licences for the sale of any intoxicating liquor; nor
- (d.) In the house of any distiller kept for distilling brandy and strong waters, so as such distiller does not permit tippling in such house; nor
- (e.) In the house of any shopkeeper whose principal dealing is more in other goods and merchandise than in brandy and strong waters, so as such shopkeeper does not permit tippling in such house; nor
- (f.) In a house of a person licensed only to sell beer or cider not to be consumed on the premises; nor
- (g.) In the house of residence of any foreign consul duly accredited as such.

(A.M.L.)

Part III.

Officers,
soldiers, and
horses
entitled to
be billeted.

105. (1.) All officers and soldiers of Her Majesty's regular forces ; and

(2.) All horses belonging to Her Majesty's regular forces ; and

(3.) All horses belonging to the officers of such forces for which forage is for the time being allowed by Her Majesty's regulations,

shall be entitled to be billeted.

The men and horses of the yeomanry, militia, and volunteers are, when subject to military law, entitled to be billeted by virtue of s. 181 (3) (4).

Accommoda-
tion and
payment on
billet.

106. (1.) The keeper of a victualling house upon whom any officer, soldier, or horse is billeted shall receive such officer, soldier, or horse in his victualling house, and furnish there the accommodation following : that is to say, lodging and attendance for the officers ; and lodging, attendance, and food for the soldiers ; and stable room and forage for the horse, in accordance with the provisions of the Second Schedule to this Act.

(2.) Where the keeper of a victualling house on whom any officer, soldier, or horse is billeted desires, by reason of his want of accommodation or of his victualling house being full or otherwise, to be relieved from the liability to receive such officer, soldier, or horse in his victualling house, and provides for such officer, soldier, or horse in the immediate neighbourhood such good and sufficient accommodation as he is required by this Act to provide, and as is approved by the constable issuing the billets, he shall be relieved from providing the same in his victualling house.

(3.) There shall be paid to the keeper of a victualling house for the accommodation furnished by him in pursuance of this Act the prices for the time being authorised in this behalf by Parliament.

(4.) An officer or soldier demanding billets in pursuance of this Act shall, before he departs, and if he remains longer than four days, at least once in every four days, pay

the just demands of every keeper of a victualling house on whom he and any officers and soldiers under his command, and his or their horses (if any), have been billeted. Part III.

(5.) If by reason of a sudden order to march, or otherwise, an officer or soldier is not able to make such payment to any keeper of a victualling house as is above required, he shall before he departs make up with such keeper of a victualling house an account of the amount due to him, and sign the same, and forthwith transmit the account so signed to a Secretary of State, who shall forthwith cause the amount named in such account as due to be paid.

Sub-section (1). The details respecting the food and forage to be furnished are contained in the second schedule: the prices to be paid are contained in the annual Act continuing this Act in force.

Sub-section (2). This sub-section shows clearly the obligation of the innkeeper to provide elsewhere accommodation for a soldier or horse billeted on him if he has not got it on his own premises, or if by reason of his house being full or otherwise, he desires to be rid of the liability. The constable is made judge of the sufficiency of the substituted accommodation.

107. (1.) The police authority for any place may cause annually a list to be made out of all keepers of victualling houses within the meaning of this Act in such place, or any particular part thereof, liable to billets under this Act, specifying the situation and character of each victualling house, and the number of soldiers and horses who may be billeted on the keeper thereof.

Annual list of keepers of victualling houses liable to billets.

(2.) The police authority shall cause such list to be kept at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by being entered in such list, or by being entered to receive an undue proportion of officers, soldiers, or horses, may complain to a court of summary jurisdiction, and the court, after such notice as the court think necessary to persons interested, may order the list to be amended in such manner as the court may think just.

Part III. Sub-section (1). *Police authority.* See definition in s. 190 (39).
 — See also s. 120.

Sub-section (2). *Court of summary jurisdiction.* See definition in s. 190 (35).

Regulations
 as to grant
 of billets.

108. The following regulations shall be observed with respect to billeting in pursuance of this Act; that is to say,

- (1.) No more billets shall at any time be ordered than there are effective officers, soldiers, and horses present to be billeted :
- (2.) All billets, when made out by the constable, shall be delivered into the hands of the commanding officer or non-commissioned officer who demanded the billets, or of some officer authorised by such commanding officer :
- (3.) If a keeper of a victualling house feels aggrieved by having an undue proportion of officers, soldiers, or horses billeted on him, he may apply to a justice of the peace, or if the billets have been made out by a justice may complain to a court of summary jurisdiction, and the justice or court may order such of the officers, soldiers, or horses to be removed and to be billeted elsewhere as may seem just :
- (4.) A constable having authority in a place mentioned in the route may act for the purposes of billeting in any locality within one mile from such place, unless some constable ordinarily having authority in such locality is present and undertakes to billet therein the due proportion of officers, soldiers, and horses :
- (5.) The regulations with respect to billets contained in the Second Schedule to this Act shall be duly observed by the constable :
- (6.) A justice of the peace, on the request of an officer or non-commissioned officer authorised to demand

billets, may vary a route by adding any place or omitting any place, and also may direct billets to be given above one mile from a place mentioned in the route :

Part III.

- (7.) A justice of the peace may require a constable to give an account in writing of the number of officers, soldiers, and horses billeted by such constable, together with the names of the keepers of victualling houses on whom such officers, soldiers, and horses are billeted, and the locality of such victualling houses.

Sub-section (8). *Court of summary jurisdiction.* See definition in s. 190 (35).

Offences in relation to Billeting.

109. If a constable commits any of the offences following ; that is to say, *Offences by constables.*

- (1.) Billets any officer, soldier, or horse on any person not liable to billets without the consent of such person ; or
- (2.) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve a person from being entered in a list as liable or from his liability to billets, or from any part of such liability ; or
- (3.) Billets or quarters on any person or premises, without the consent of such person or the occupier of such premises, any person or horse not entitled to be billeted ; or
- (4.) Neglects or refuses after sufficient notice is given to give billets demanded for any officer, soldier, or horse entitled to be billeted ;

he shall, on summary conviction, be liable to a fine of not less than forty shillings, and not exceeding ten pounds.

On summary conviction. See ss. 166-168.

Part III. 110. If a keeper of a victualling house commits any of the offences following ; that is to say,

Offences by
keepers of
victualling
houses.

- (1.) Refuses or neglects to receive any officer, soldier, or horse billeted upon him in pursuance of this Act, or to furnish such accommodation as is required by this Act ; or
- (2.) Gives or agrees to give any money or reward to a constable to excuse or relieve him from being entered in a list as liable or from his liability to billets, or any part of such liability ; or
- (3.) Gives or agrees to give to any officer or soldier billeted upon him in pursuance of this Act any money or reward in lieu of receiving an officer, soldier, or horse, or furnishing the said accommodation ;

he shall, on summary conviction, be liable to a fine of not less than forty shillings and not exceeding five pounds.

On summary conviction. See ss. 166-168.

Offences by
officers or
soldiers.

111. (1.) If any officer quarters or causes to be billeted any officer, soldier, or horse otherwise than he is allowed by this Act upon any person, he shall be guilty of a misdemeanor.

(2.) If any officer or soldier commits any offence in relation to billeting for which he is liable to be punished under Part One of this Act, other than an offence in respect of which any other remedy is given by this part of this Act to the person aggrieved, he shall upon summary conviction, be liable to a fine not exceeding fifty pounds.

(3.) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to a Secretary of State.

This section punishes with a fine on summary conviction all the offences in relation to billeting which have been made military offences by s. 30, except those for which the injured person can

obtain compensation through a court of summary jurisdiction under **Part III.**
s. 119.

Impressment of Carriages.

112. (1.) Every justice of the peace in the United Kingdom having jurisdiction in any place mentioned in a route issued to the commanding officer of any portion of Her Majesty's regular forces shall, on the demand of such commanding officer, or of an officer or non-commissioned officer authorised by him, and on production of such route, issue his warrant requiring some constable or constables having authority in such place to provide, within a reasonable time to be named in the warrant, such carriages, animals, and drivers as are stated to be required for the purpose of moving the regimental baggage and regimental stores of the forces mentioned in the route in accordance with the route; and the constable or constables shall execute such warrant, and persons having carriages and animals suitable for the said purpose shall, when ordered by a constable in pursuance of such warrant, furnish the same in a state fit for use for the aforesaid purpose.

Supply of
carriages,
&c., for regi-
mental
baggage and
stores on the
march.

(2.) The route for the purpose of this section shall be such route as is mentioned in the foregoing provisions of this part of this Act with respect to billeting.

(3.) A route purporting to be issued and signed as required by those provisions, if delivered to an officer or non-commissioned officer by his commanding officer, shall be a sufficient authority to such officer or non-commissioned officers to demand carriages and animals in pursuance of this Act, and when produced by an officer or non-commissioned officer shall be conclusive evidence to a justice and constable of the authority of the officer or non-commissioned officer producing the same to demand carriages and animals in accordance with such route.

(4.) The warrant ordering carriages, animals, and drivers to be provided shall specify the number and

Part III. description of the carriages, and also the places from and to which the same are to travel, and the distances between such places.

(5.) When sufficient carriages or animals cannot be procured within the jurisdiction of the said justice, any justice having jurisdiction in the next adjoining place shall, by a like course of proceeding, supply the deficiency.

(6.) A fee of one shilling and no more shall be paid for the warrant by the officer or non-commissioned officer applying for the same, and shall be paid to the clerk of the justice.

See, generally, as to impressment of carriages, M.M.L., Chapter IX, paras. 129-134.

Sub-section (1). The same route is in practice used to obtain both billets and carriages.

For the purpose of moving the regimental baggage and stores. Carriages can only be impressed for this purpose, and use of them for any other purpose is penal (s. 31 (5)), except in cases of emergency, which are provided for by s. 115. The term "carriage" has not in this Act the popular meaning of a conveyance for persons only, but means a waggon, cart, or any vehicle suitable for carrying baggage.

Payment for
and regula-
tions as to
carriages,
animals, &c.

118. (1.) There shall be paid in respect of the carriages and animals furnished in pursuance of this part of this Act the rates specified in the Third Schedule to this Act and the regulations contained in that schedule with respect to the carriages and animals furnished shall be duly observed.

(2.) The following authorities; that is to say,

(a.) In England, the court of general or quarter sessions of a county or of a borough subject to the Municipal Corporations Act, 1835 (a); and

(b.) In Scotland, the commissioners of supply

5 & 6 W. 4,
c. 76.

(a) This Act has been repealed, and replaced by the Municipal Corporations Act, 1882. (45 and 46 Vict. c. 50.)

of a county, or the magistrates of a Royal or Parliamentary burgh ; and Part III.

- (c.) In Ireland, the grand jury for a county, a county of a city, a county of a town and city, or a city or town and county, also any council of any such county, town or city having by law the fiscal powers of a grand jury,

may from time to time, as respects places within their jurisdiction, by order increase the rates authorised in the said schedule by such amount in respect of each rate, not exceeding one-third, as may seem reasonable, and the amount of such an increase shall be notified in writing by the justice granting a warrant in pursuance of this Act to the person demanding the warrant.

(3.) The order shall specify the average price of hay and oats at the nearest market town at the time of fixing such increased rates, and the order shall not be in force for more than ten days beyond the next meeting of such authority, but may be renewed from time to time by a fresh order or orders, and while in force shall have effect as part of the said schedule.

(4.) A copy of every such order, duly authenticated, shall be transmitted to a Secretary of State within three days after the making thereof.

(5.) The officer or non-commissioned officer who demands carriages or animals in pursuance of this part of this Act shall pay the sums due in respect of the same to the owners or drivers of the carriages or animals, and one-third part of such payment shall in each case, if required be made before the carriage is loaded ; and such payments shall be made, if required, in the presence of a justice or constable.

(6.) If an officer or non-commissioned officer is from any cause unable to pay the amount due to the owner or driver of any carriage or animal, he shall make up with such

Part III. owner and driver and sign an account of the amount due to him, and forthwith transmit the account so signed to a Secretary of State, who shall forthwith cause the amount named therein to be paid to such owner or driver.

Annual list
of persons
liable to
supply
carriages.

114. (1.) The police authority for any place may cause annually a list to be made out of all persons in such place, or any particular part thereof, liable to furnish carriages and animals under this Act, and of the number and description of the carriages and animals of such persons ; and where a list is so made, any justice may by warrant require any constable or constables having authority within such place to give from time to time, on demand by an officer or non-commissioned officer under this Act, orders to furnish carriages and animals, and such warrant shall be executed as if it were a special warrant issued in pursuance of this Act on such demand, and the orders shall specify the like particulars as such special warrant.

(2.) The police authority shall cause such list to be kept at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by being entered in such list, or by being entered to furnish any number or description of carriages or animals which he is not liable to furnish, may complain to a court of summary jurisdiction, and the court, after such notice as the court think necessary to persons interested, may order the list to be amended in such manner as the court may think just.

(3.) All orders given by constables for furnishing carriages and animals shall, as far as possible, be made from such list in regular rotation.

Police authority. For definition see s. 190 (89).

Supply of
carriages
and vessels
in case of
emergency.

115. (1.) Her Majesty by order, distinctly stating that a case of emergency exists, and signified by a Secretary of State, and also in Ireland the Lord Lieutenant by a like order, signified by the Chief Secretary or Under Secretary,

may authorise any general or field officer commanding **Part III.** Her Majesty's regular forces in any military district or place in the United Kingdom to issue a requisition under this section (hereinafter referred to as a requisition of emergency).

(2.) The officer so authorised may issue a requisition of emergency under his hand, reciting the said order, and requiring justices of the peace to issue their warrants for the provision, for the purpose mentioned in the requisition, of such carriages and animals as may be provided under the foregoing provisions, and also of carriages of every description, and of horses of every description, whether kept for saddle or draught, and also of vessels (whether boats, barges, or other) used for the transport of any commodities whatsoever upon any canal or navigable river.

(3.) A justice of the peace, on demand by an officer of the portion of Her Majesty's forces mentioned in a requisition of emergency, or by an officer of a Secretary of State authorised in this behalf, and on production of the requisition, shall issue his warrant for the provision of such carriages, animals, and vessels as are stated by the officer producing the requisition of emergency to be required for the purpose mentioned in the requisition; the warrant shall be executed in the like manner, and all the provisions of this Act as to the provision or furnishing of carriages and animals, including those respecting fines on officers, non-commissioned officers, justices, constables or owners of carriages or animals, shall apply in like manner as in the case where a justice issues, in pursuance of the foregoing provisions of this Act, a warrant for the provision of carriages and animals, and shall apply to vessels as if the expression carriages included vessels.

(4.) A Secretary of State shall cause due payment to be made for carriages, animals, and vessels furnished in pursuance of this section, and any difference respecting the

Part III. amount of payment for any carriage, animal, or vessel shall be determined by a county court judge having jurisdiction in any place in which such carriage, animal, or vessel was furnished or through which it travelled in pursuance of the requisition.

(5.) Canal, river, or lock tolls are hereby declared not to be demandable for vessels while employed in any service in pursuance of this section or returning therefrom. And any toll collector who demands or receives toll in contravention of this exemption, shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings.

(6.) A requisition of emergency, purporting to be issued in pursuance of this section and to be signed by an officer therein stated to be authorised in accordance with this section, shall be evidence, until the contrary is proved, of its being duly issued and signed in pursuance of this Act, and if delivered to an officer of Her Majesty's forces or of a Secretary of State shall be a sufficient authority to such officer to demand carriages, animals, and vessels in pursuance of this section, and when produced by such officer shall be conclusive evidence to a justice and constable of the authority of such officer to demand carriages, animals, and vessels in accordance with such requisition; and it shall be lawful to convey on such carriages, animals, and vessels, not only the baggage, provisions, and military stores of the troops mentioned in the requisition of emergency, but also the officers, soldiers, servants, women, children, and other persons of and belonging to the same.

Carriages and horses of every description and barges and other vessels used in inland navigation may under this section be impressed for any military purposes mentioned in the requisition signed by the general or field officer in command; and may therefore be impressed for the conveyance of persons as well as of baggage. The expression "horses" includes mules and other beasts of burden or draught, s. 190 (40). For "carriage," see note to s. 112.

Sub-section (4). *County Court Judge.* For definition as respects Scotland and Ireland, see s. 190 (87). Part III.

Sub-section (6). The requisition of emergency is made to prove itself so to speak ; see note to s. 103.

Offences in relation to the Impressment of Carriages.

116. Any constable who—

- (1.) Neglects or refuses to execute any warrant of a justice requiring him to provide carriages, animals, or vessels ; or Offences by constables.
- (2.) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve any person from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing any carriage, animal, or vessel ; or
- (3.) Orders any carriage, animal, or vessel to be furnished for any person or purpose or on any occasion for and on which it is not required by this Act to be furnished ;

shall, on summary conviction, be liable to a fine of not less than twenty shillings nor more than twenty pounds.

On summary conviction. See ss. 166–168.

117. A person ordered by any constable in pursuance of this Act to furnish a carriage, animal, or vessel who— Offences by persons ordered to furnish carriages, animals, or vessels.

- (1.) Refuses or neglects to furnish the same according to the orders of such constable and this Act ; or
- (2.) Gives or agrees to give to a constable or to any officer or non-commissioned officer any money or reward whatsoever to be excused from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing, or in lieu of furnishing, any carriage, animal, or vessel in pursuance of this Act ; or
- (3.) Does any act or thing by which the execution of

Part III.

any warrant or order for providing or furnishing carriages, animals, or vessels is hindered,

shall, on summary conviction, be liable to pay a fine of not less than forty shillings nor more than ten pounds.

On summary conviction. See ss. 166-168.

Offences by
officers or
soldiers.

118. (1.) Any officer or soldier who commits any offence in relation to the impressment of carriages for which he is liable to be punished under Part I of this Act, other than an offence in respect of which any other remedy is given by this part of this Act to the person aggrieved, shall, on summary conviction, be liable to a fine not exceeding fifty pounds nor less than forty shillings.

(2.) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to a Secretary of State.

This section punishes with a fine on summary conviction (ss. 166-168) the offences committed by officers and soldiers in respect of impressment of carriages, which are made military offences by s. 81, except those for which compensation can be recovered through a court of summary jurisdiction, under s. 119.

For definition of court of summary jurisdiction, see s. 190 (35).

Supplemental Provisions as to Billeting and Impressment of Carriages.

Application
to court of
summary
jurisdiction
respecting
sums due to
keepers of
victualling
houses or
owners of
carriages,
&c.

119. (1.) The following persons, that is to say,

- (a.) If any officer or soldier fails to comply with the provisions of this part of this Act with respect to the payment of a sum due to a keeper of a victualling house or in respect of carriages or animals, or to the making up of an account of the sum due, the person to whom the sum is due; or
- (b.) If a keeper of a victualling house suffers any ill-treatment by violence, extortion, or making disturbance in billets from any officer or soldier

billeted upon him, or if the owner or driver of any carriage, animal, or vessel furnished in pursuance of this part of this Act suffers any ill-treatment from any officer or soldier, the person suffering such ill-treatment, but, when there is an officer commanding such officer or soldier present at the place, only after first making due complaint, if practicable, to such commanding officer, may apply to a court of summary jurisdiction, and such court, if satisfied on oath of such failure or such ill-treatment, and of the amount fairly due to the applicant, including the costs of his application to the court of summary jurisdiction, shall certify the same to a Secretary of State, who shall forthwith cause the amount due to be paid. Part III.

(2.) Provided that the Secretary of State, if it appear to him that the amount named in such certificate is not justly due, or is in excess of the amount justly due, may direct a complaint to be made to a court of summary jurisdiction for the county, borough, or place for which the court giving the certificate acted, and the court after hearing the case may by order confirm the said certificate, or vary it in such manner as to the court seems just.

This section allows an innkeeper or owner of an impressed carriage aggrieved by the non-payment of a sum due to him, or by ill-treatment on the part of an officer or soldier, on failure to obtain redress from the commanding officer, to apply to a court of summary jurisdiction, who may certify to the Secretary of State the amount which should be paid.

For definition of court of summary jurisdiction, see s. 190 (35).

120. (1.) A constable shall observe the directions given to him for the due execution of this part of this Act by the police authority; and the police authority, or any member thereof, and every justice of the peace may, if it seem necessary, and in the absence of a constable shall, themselves or himself exercise the powers and perform the duties by this part of this Act vested in or imposed on a Provisions as to constables, police authorities, and justices.

Part III. constable, and in such case every such person is in this part of this Act included in the expression "constable."

(2.) A person having or executing any military office or commission in any part of the United Kingdom shall not, directly or indirectly, be concerned, as a justice or constable, in the billeting of or appointing quarters for any officer or soldier or horse of the corps, or part of a corps, under his immediate command, and all warrants, acts, and things made, done and appointed by such person for or concerning the same shall be void.

Sub-section (1). *Police authority.* See definition in s. 190 (39).

The duty of billeting is thrown by this Act on the police, as successors to the parish constables who formerly had that duty. In practice, in those places where troops are frequently passing, there are officers commonly known as billet-masters, who have the management of the billeting.

Fraudulent
claim for
carriages,
animals, &c.

121. If any person—

- (1.) Forges or counterfeits any route or requisition of emergency, or knowingly produces to a justice or constable any route or requisition of emergency so forged or counterfeited ; or
- (2.) Personates or represents himself to be an officer or soldier authorised to demand any billet, or any carriage, animal, or vessel, or to be entitled to be billeted, or to have his horse billeted ; or
- (3.) Produces to a justice or constable a route or requisition which he is not authorised to produce, or a document falsely purporting to be a route or requisition,

he shall be liable, on summary conviction, to imprisonment for a period not exceeding three months, with or without hard labour, or to a fine not less than twenty shillings and not more than five pounds.

On summary conviction. See ss. 166-168.

PART IV.

Part IV.

GENERAL PROVISIONS.

Supplemental Provisions as to Courts-Martial.

122. (1.) Her Majesty may, subject to the provisions of this Act, by any warrant or warrants under Her Sign Manual, in such form as Her Majesty may from time to time direct, from time to time—

Royal
warrant
required for
convening
and con-
firming
general
courts-
martial.

- (a.) Convene or authorise any qualified officer to convene a general court-martial for the trial, under this Act, of any person subject to military law ; and
- (b.) Give a general authority to any qualified officer to convene general courts-martial for the trial, under this Act, of such persons subject to military law as may for the time being be under or within the territorial limits of his command ; and
- (c.) Empower any qualified officer to delegate to any officer under his command not below the degree of field officer, a general authority to convene general courts-martial for the trial under this Act, of such persons subject to military law, as are for the time being under or within the territorial limits of his command ; and
- (d.) Reserve for confirmation by Her Majesty, or empower any qualified officer to confirm, the findings and sentences of general courts-martial ; and
- (e.) Empower any officer for the time being authorised to confirm the findings and sentences of general courts-martial to reserve for confirmation findings or sentences of general courts-martial, or to delegate a power of confirming such findings or

Part IV.

sentences to any officer under his command not below the degree of field officer ; and

- (f.) Revoke any warrant for the time being in force, or any part of any warrant, leaving the remainder in full force ;

Provided that where it appears to Her Majesty that in any place out of the United Kingdom, where no field officer is for the time being in command, hardship would be inflicted on persons accused of offences by reason of there being no means of speedily trying such persons for offences, a warrant under this section may empower an officer to delegate to an officer not below the degree of captain any authority and power authorised under this section to be delegated to a field officer.

(2.) The same officer may or may not be appointed convening and confirming officer.

(3.) The power of convening general courts-martial, and of confirming the findings and sentences of general courts-martial, or either of such powers, may be granted subject to such restrictions, reservations, exceptions, and conditions as to Her Majesty may seem meet, and when delegated by any officer empowered in that behalf may, subject to the provisions of any warrant granting him such power, be delegated subject to such restrictions, reservations, exceptions and conditions as to such officer may seem fit.

(4.) Warrants under this section may be addressed to officers by name or by designation of their offices, or partly in one way and partly in the other, and any warrant may or may not, according to the terms of such warrant and the mode in which the same is addressed, be limited to an officer named, or be extended to a person for the time being performing the duties of the officer named, or be extended to the successors in command of an officer.

(5.) Any warrant of Her Majesty issued in pursuance of this section shall be of the same force as if the provisions thereof were enacted by this Act.

(6.) "Qualified officer" for the purposes of this Act, in Part IV. so far as it relates to convening or confirming the findings and sentences of general courts-martial, means the Commander-in-Chief and any officer not below the rank of a field officer commanding for the time being any body of the regular forces either within or without Her Majesty's dominions; it also includes the Lord Lieutenant of Ireland, the Governor-General of India, and a Governor of any colony on whom the command of any body of regular forces may be conferred by Her Majesty.

See Chapter III, paras. 19-23 and 91-95.

123. (1.) Any officer or person authorised to convene general courts-martial may—

Authority of officer empowered to convene general courts-martial required for convening and confirming district courts-martial.

(a.) Convene a district court-martial for the trial under this Act of any person under his command who is subject to military law; and

(b.) Empower any person under his command not below the rank of captain to convene a district court-martial for the trial under this Act of any person under the command of such last-mentioned officer who is subject to military law; and

(c.) Confirm the finding and sentence of any district court-martial, or empower any officer whom he has power to authorise to convene district courts-martial to confirm the finding and sentence of any district court-martial.

(2.) The same officer may or may not be appointed convening and confirming officer under this section.

(3.) The power of convening, and of confirming the findings and sentences of district courts-martial, or either of such powers, may be granted under this section, subject to such restrictions, reservations, exceptions, and conditions as to the officer granting such power may seem meet.

Part IV. (4.) Any authority under this section for convening district courts-martial may be addressed to an officer by name or by designation of his office, or partly in one way and partly in the other, and may or may not, according to the terms thereof and the mode in which the same is addressed, be limited to an officer named, or be extended to a person holding for the time being or performing the duties of the office, or be extended to the successors in command of such officer.

Right of person tried to copy of proceedings of court-martial.

124. Any person tried by a court-martial shall be entitled, on demand, at any time in the case of a general court-martial within seven years, and in the case of any other court-martial within three years after the confirmation of the finding and sentence of the court, to obtain from the officer or person having the custody of proceedings of such court a copy thereof, including the proceedings with respect to the revision and confirmation thereof, upon payment for the same at the prescribed rate, not exceeding twopence for every folio of seventy-two words ; and for the purposes of this section the proceedings of courts-martial shall be preserved in the prescribed manner.

Prescribed rate. See Rule 97. If an application is made for a copy of part only of the proceedings, it should be complied with.

Prescribed manner. See Rule 96.

Summoning and privilege of witnesses at court-martial.

125. (1.) Every person required to give evidence before a court-martial may be summoned or ordered to attend in the prescribed manner.

(2.) Every person attending in pursuance of such summons or order as a witness before any court-martial shall, during his necessary attendance in or on such court, and in going to and returning from the same, have the same privilege from arrest as he would have if he were a witness before a superior court of civil jurisdiction.

Prescribed manner. See Rule 77.

Privilege from arrest. This privilege is from arrest on civil

process, as, *e.g.*, for debt, while going to the place of trial, attending there, and returning home, or as it is expressed, *eundo, morando, redeundo*. There is no privilege from arrest on any criminal process, as, *e.g.*, on a charge for a crime. The courts are disposed to be liberal in determining what is reasonable time for going, staying, or returning; thus a witness in a cause tried on Friday and arrested on Saturday evening when entering the coach to return home was held to be improperly arrested. The remedy for an improper arrest is to apply to the court on whose process the arrest took place, or to apply for a *habeas corpus*.

Part IV.

—

126. (1.) Where any person who is not subject to military law commits any of the following offences, that is to say, Misconduct of civilian at court-martial.

- (a.) On being duly summoned as a witness before a court-martial, and after payment or tender of the reasonable expenses of his attendance, makes default in attending ; or
- (b.) Being in attendance as a witness—
 - (i.) Refuses to take an oath legally required by a court-martial to be taken ; or
 - (ii.) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him ; or
 - (iii.) Refuses to answer any question to which a court-martial may legally require an answer,

the president of the court-martial may certify the offence of such person under his hand to any court of law in the part of Her Majesty's dominions where the offence is committed which has power to punish witnesses if guilty of like offences in that court, and that court may thereupon inquire into such alleged offence, and after examination of any witness that may be produced against or for the person so accused, and after hearing any statement that may be offered in defence, if it seem just, punish such witness in like manner as if he had committed such offence in a proceeding in that court.

(2.) Where a person not subject to military law when

Part IV. — examined on oath or solemn declaration before a court-martial wilfully gives false evidence, he shall be liable on indictment or information to be convicted of and punished for the offence of perjury, or the offence by whatever name called in the part of Her Majesty's dominions in which the offence is tried which, if committed in England, would be perjury.

(3.) Where a person not subject to military law is guilty of any contempt towards a court-martial, by using insulting or threatening language, or by causing any interruption or disturbance in its proceedings, or by printing observations or using words calculated to influence the members of or witnesses before such court, or to bring such court into disrepute, the president of the court-martial may certify the offence of such person, under his hand, to any court of law in the part of Her Majesty's dominions where the offence is committed which has power to commit for contempt, and that court may thereupon inquire into such alleged offence, and after hearing any witnesses that may be produced against or on behalf of the person so accused, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of such person in like manner as if he had been guilty of contempt of that court.

Sub-section (3). The object of this sub-section is to enable courts-martial to obtain the punishment of civilians guilty of contempt of court. Usually exclusion from the court will be the best mode of dealing with the case; care being taken not to use any unnecessary force. If it is requisite to apply to a court, the application can be made, where the case is not a serious one, in England to a county court; in Scotland to a sheriff's court, and in Ireland to a civil bill court. In serious cases the application should be made in England or Ireland to the High Court of Justice; and in Scotland to the Court of Session.

The certificate need not be in any particular form, but should be addressed to the court to which the certificate is to be sent, and should state the name, address, and description of the person who has committed the offence, and the offence which he has

committed. It will usually be desirable to make a formal application to the court to act upon the certificate. **Part IV.**

127. A court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law, or ordinance of any legislature whatsoever other than the Parliament of the United Kingdom. Court-martial governed by English law only.

A soldier, wherever he goes, carries with him the military law of his country, that is to say, formerly the Mutiny Act and Articles of War, and now the Army Act. The Indian Evidence Act, 1872, enacted that the law of evidence of that country should apply to courts-martial, and by inadvertence this was made apparently to apply to British courts-martial, consequently it was thought necessary to reverse the Indian enactment.

128. The rules of evidence to be adopted in proceedings before courts-martial shall be the same as those which are followed in civil courts in England ; and no person shall be required to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court. Rules of evidence to be the same as in civil courts.

Practically this section is merely a declaration of the law, as even without it, military courts would be bound to follow the rules of evidence in civil courts. As to evidence generally, see Chapter IV.

129. Whereas it is expedient to make provision respecting the conduct of counsel when appearing on behalf of the prosecution or defence at general courts-martial in pursuance of rules under this Act, be it therefore enacted as follows :

(1.) Any conduct of a counsel which would be liable to censure or a contempt of court, if it took place before Her Majesty's High Court of Justice in England, shall likewise be deemed liable to censure, or a contempt of court, in the case of a court-martial ; and the rules laid down for the practice of courts-martial and the guidance of counsel shall be binding on counsel appearing before such courts-

Position of counsel at courts-martial.

Part IV. martial, and any wilful disobedience of such rules shall be professional misconduct, and, if persevered in, be deemed a contempt of court.

(2.) Where a counsel is guilty of conduct liable to censure or a contempt of court, such offence shall be deemed to be an offence within the meaning of section one hundred and twenty-six of this Act, and the president of the court-martial may certify the same to a court of law accordingly ; and the court of law to which the same is certified shall deal with such offence in the same manner as if it had been committed in a proceeding before that court.

(3.) A court-martial may, by order under the hand of the president, cause a counsel to be removed from the court who is guilty of such an offence as may, in the opinion of the court-martial, require his removal from court, but in every such case the president shall certify the offence committed to a court of law in manner provided by the above-mentioned section.

See as to counsel, Rules 86 to 92.

Sub-section (3). The removal of a counsel from the court could only become requisite under very grave circumstances.

**Provision in
case of
insane
persons.**

130. (1.) Where it appears on the trial by court-martial of a person charged with an offence that such person is by reason of insanity unfit to take his trial, the court shall find specially that fact ; and such person shall be kept in custody in the prescribed manner until the directions of Her Majesty thereon are known, or until any earlier time at which such person is fit to take his trial.

(2.) Where on the trial by court-martial of a person charged with an offence it appears that such person committed the offence, but that he was insane at the time of the commission thereof, the court shall find specially the fact of his insanity, and such person shall be kept in custody in the prescribed manner until the directions of Her Majesty thereon are known.

(3.) In either of the above cases Her Majesty may give orders for the safe custody of such person during her pleasure in such place and in such manner as Her Majesty thinks fit. Part IV.

(4.) A finding under this section shall be subject to confirmation in like manner as any other finding.

(5.) If a person imprisoned by virtue of this Act becomes insane, then, without prejudice to any other provision for dealing with such insane prisoner, a Secretary of State in any case, and in the case of a prisoner confined in India the Governor-General of India, or the Governor of any presidency in which the person is confined, and in the case of a prisoner confined in a colony the Governor of that colony may, upon a certificate of such insanity by two qualified medical practitioners, order the removal of such prisoner to an asylum or other proper place for the reception of insane persons in the United Kingdom, India, or the colony, according as the prisoner is confined in the United Kingdom, India, or the colony, there to remain for the unexpired term of his imprisonment, and upon such person being certified in the like manner to be again of sound mind, may order his removal to any prison in which he might have been confined if he had not become insane, there to undergo the remainder of such punishment.

This section provides for dealing with insane persons who stand charged with offences, and with prisoners who become insane. Similar provisions are contained in ss. 68, 80 of the Naval Discipline Act, 29 & 30 Vict. c. 109.

Sub-section (2). *Prescribed.* See Rule 56 (C) and note.

Sub-section (5). *Imprisoned by virtue of this Act.* This refers only to persons imprisoned under sentence, and not to persons in custody awaiting trial.

General Provisions as to Prisons.

181. (1.) A Secretary of State may from time to time make arrangements with the Governor-General of India or the Governor of a colony for the reception in any prison in India or in such colony of prisoners under this Act, and Arrangements with Indian and colonial governments as to prisons.

Part IV. of deserters or absentees without leave from Her Majesty's service, on payment of such sums as are provided by the arrangement, and the governor of any prison to which any such arrangement relates shall be under the same obligation as the governor of a prison in the United Kingdom to receive and detain such prisoners, deserters, and absentees without leave :

(2.) Provided that where a prisoner has been sentenced in India or in a colony to a term of imprisonment exceeding twelve months, or to a term of penal servitude, he shall be transferred as soon as practicable to a prison or convict establishment within the United Kingdom, unless in the case of imprisonment the court shall for special reasons otherwise order, there to undergo his sentence, or unless he belongs to a class with respect to which a Secretary of State has declared that, by reason of the climate or place of his birth or the place of his enlistment, or otherwise, it is not beneficial to the prisoner to transfer him to the United Kingdom ; every such declaration shall be laid before both Houses of Parliament.

(3.) Any order which can be made under this section by the court may be made by the confirming authority in confirming the finding and sentence, and in the case of any commutation or remission of sentence, may be made by the authority commuting or remitting the sentence.

Under s. 60 an offender sentenced to penal servitude in India or a colony must be sent to a penal servitude prison as soon as practicable, to undergo his sentence, and under this section, that prison must be in the United Kingdom, unless he belongs to a class to which a declaration of the Secretary of State, made under this section, is applicable. An offender sentenced to imprisonment in India or a colony must also, if his term of imprisonment exceeds twelve months be sent home to undergo his sentence, unless he belongs to such class as aforesaid, or unless the court which tried him, or the authority confirming or commuting or remitting the sentence for special reasons otherwise order.

Under this section the Secretary of State has made general regulations dated October, 1881, declaring that it is not beneficial to any of the following classes to be transferred to the United

Kingdom when under sentence of penal servitude or imprisonment. **Part IV.**

(1.) By reason of climate:—

a. Asiatics and Africans.

b. Other persons of colour.

(2.) By reason of place of birth:—

c. Persons born out of the United Kingdom and domiciled in any place not in the United Kingdom.

(3.) By reason of place of enlistment:—

d. Persons engaged for service in the Royal Malta Fencible Artillery, or in any Indian or colonial corps.

For definitions of India and colony see s. 190 (21), (23). It will be recollected that for the purpose of the provisions of the Act relating to the execution of sentences of penal servitude and imprisonment, the Channel Islands and Isle of Man are deemed to be colonies. Section 187 (2).

182. (1.) The governor of every prison in the United Kingdom, and the governor of every prison in India or a colony who is under the same obligation as the governor of a prison in the United Kingdom, shall receive and confine, until discharged or delivered over in due course of law, all prisoners sent to such prison in pursuance of this Act, and every person delivered into his custody as a deserter or absentee without leave by any person conveying him under legal authority, on production of the warrant of a court of summary jurisdiction on which such deserter or absentee without leave has been taken or committed, or of some order from a Secretary of State, or from the Governor-General of India, or the Governor of a colony, which order shall continue in force until the deserter or absentee without leave has arrived at his destination.

Duty of governor of prison to receive prisoners, deserters, and absentees without leave.

(2.) Every such governor shall also receive into his custody for a period not exceeding seven days, any soldier in military custody upon delivery to him of a written order purporting to be signed by the commanding officer of such soldier.

(3.) The provisions of this section with respect to the governor of a prison in the United Kingdom shall apply

Part IV. to a person having charge of any police station or other place in which prisoners may legally be confined.

Sub-section (1). *Same obligation.* Sec s. 131.

For definitions of India and colony, see s. 190 (21), (23), and as to the Channel Islands and Isle of Man, s. 187 (2).

Sub-section (2). The object of this is to provide for the safe custody of military prisoners during a halt on the line of march. The War Office regulations provide for the payment to the authorities of the prison in such a case of one shilling a day for every prisoner so confined.

Military Prisons.

Establishment and regulation of military prisons.

133. (1.) It shall be lawful for a Secretary of State and in India for the Governor-General, to set apart any building or part of a building under the control of the Secretary of State or Governor-General as a military prison, or as a public prison for the imprisonment of military prisoners, and to declare that any such building or part of a building shall be a military prison, or a public prison, as the case may be, and every military prison so declared shall be deemed to be a public prison within the meaning of the provisions of this Act relating to imprisonment, and if such prison is in India shall be deemed to be an authorised prison.

(2.) It shall be lawful for a Secretary of State, and in India for the Governor-General, from time to time to make, alter, and repeal rules for the government, management, and regulation of military prisons, and for the appointment and removal and powers of inspectors, visitors, governors, and officers thereof, and for the labour of military prisoners therein, and for the safe custody of such prisoners, and for the maintenance of discipline among them, and for the punishment by personal correction, not exceeding twenty-five lashes in the case of corporal punishment, restraint, or otherwise of offences committed by such prisoners, so, however, that such rules shall not authorise corporal punishment to be inflicted for

any offence in addition to the offences for which such Part IV. punishment can be inflicted in pursuance of the Prison Act, 1865, and the Prison Act, 1877, nor render the imprisonment more severe than it is under the law in force for the time being in any public prison in England subject to the Prison Act, 1877, and provided that all the regulations in the Prison Act, 1865, and in the Prison Act, 1877, as to the duties of gaolers, medical officers, and coroners, shall be contained in such rules, so far as the same can be made applicable.

28 & 29 Vict.
c. 126.
40 & 41 Vict.
c. 21.

(3.) On all occasions of death by violence or attended with suspicious circumstances in any military prison in India an inquest is to be held, to make inquiry into the cause of death. The commanding officer shall cause notice to be given to the nearest magistrate, duly authorised to hold inquests, and such magistrate shall hold an inquest into the cause of any such death, in the manner and with the powers provided in the case of similar inquiries held under the law for the time being in force in India for regulating criminal procedure.

(4.) Where from any cause there is no competent civil authority available, the commanding officer shall convene a court of inquest. Such court shall be convened and shall hold the inquest in such manner as [may be prescribed].

(5.) Such rules may apply to such prisons any enactments of the Prison Act, 1865, imposing punishments on any persons not prisoners.

(6.) All rules made by a Secretary of State in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if not, as soon as practicable after the commencement of the then next session of Parliament.

Sub-section (1). This section enables the Secretary of State to set apart any building as a military prison, and gives a similar power to the Governor-General of India. This power is in practice exercised by the Secretary of State for War.

Part IV.

The section also gives power to a Secretary of State to set apart any part of a building under his control as a public prison for the imprisonment of military prisoners. This power is in practice exercised by the Home Secretary, and enables him to set apart a portion of Millbank or any other prison under his control for the reception of military prisoners. Any part of a building so set apart as a public prison can be declared by the Secretary of State to be a public prison, and necessarily comes] under the rules relating to other public prisons.

As military prisoners sentenced to imprisonment are to undergo their sentences either in military custody or in a public prison (see ss. 63 (1), 64 (1), 65 (1)), this section provides that a building declared to be a military prison shall be a public prison, so as to allow such sentences to be undergone in a military prison. As a penal servitude prisoner while in military custody may be confined in an authorised prison (s. 62 (2)), this section declares a military prison in India to be an authorised prison, so as to allow any such military convict to be confined during his intermediate custody in a military prison.

Sub-section (4). *Prescribed.* See Rule 126.

The orders for the interior management of military prisons, &c., are laid down in the Rules for Military Prisons. See Q.R., 1885, Sect. VI, para. 206.

Restrictions
on confine-
ment in
prisons in
India or
colonies, not
being mili-
tary prisons.

134. No soldier shall be confined longer than is absolutely necessary in prisons other than military prisons in India and the colonies, where the rules for the government and management of such prisons differ from those made by the Governor-General of India and a Secretary of State in the case of India and the colonies respectively.

For definitions of India and colony see s. 190 (21), (23), and as to the Channel Islands and Isle of Man see 187 (2).

Classifica-
tion of
prisoners.

135. Whereas it is expedient that a clear difference should be made between the treatment of prisoners convicted of breaches of discipline and the treatment of prisoners convicted of offences of an immoral, dishonest, shameful, or criminal character, a Secretary of State shall from time to time make rules for the classification and treatment of such prisoners.

See Q.R., 1885, Sect. VI, para. 162.

Pay.

Part IV.

136. The pay of an officer or soldier of Her Majesty's regular forces shall be paid without any deduction other than the deductions authorised by this or any other Act or by any Royal Warrant for the time being.

Authorised deductions only to be made from pay.

137. The following penal deductions may be made from the ordinary pay due to an officer of the regular forces :

Penal stoppages from ordinary pay of officers.

- (1.) All ordinary pay due to an officer who absents himself without leave, or overstays the period for which leave of absence has been granted him, unless a satisfactory explanation has been given through the commanding officer of such officer, and has been notified as satisfactory by the Commander-in-Chief to a Secretary of State ;
- (2.) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence ;
- (3.) The sum required to make good the pay of any officer or soldier which he has unlawfully retained or unlawfully refused to pay.

This section states the penal deductions that may be made from the ordinary pay of an officer, and by implication excludes other penal deductions, but it does not prohibit deductions not penal, as, for instance, in respect of rations, or in India for debts under s. 150. Anything beyond ordinary pay, being in the nature of a gratuity or reward, is left entirely to the disposal of the Royal Warrant.

138. The following penal deductions may be made from the ordinary pay due to a soldier of the regular forces :

Penal stoppages from ordinary pay of soldiers.

- (1.) All ordinary pay for every day of absence either on desertion or without leave, or as prisoner of war, and for every day of imprisonment either under sentence for an offence awarded by a civil court or court-martial, or by his commanding officer,

Part IV.

or if he is on board one of Her Majesty's ships by the commanding officer of that ship, or under detention on the charge for an offence of which he is afterwards convicted by a civil court or court-martial, or under detention on the charge for absence without leave, for which he is afterwards awarded imprisonment by his commanding officer ;

- (2.) All ordinary pay for every day on which he is in hospital on account of sickness certified by the proper medical officer attending on him at the hospital to have been caused by an offence under this Act committed by him ;
- (3.) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence, or if he is on board one of Her Majesty's ships, by the commanding officer of that ship, or where he has confessed the offence and his trial is dispensed with by order under section seventy-three of this Act, as may be awarded by that order or any other order of a competent military authority under that section ;
- (4.) The sum required to make good such compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, or regimental necessities, or military decoration, or to any buildings or property, as may be awarded by his commanding officer, or, in case he requires to be tried by court-martial, by that court-martial, or if he is on board one of Her Majesty's ships, by the commanding officer of that ship ;
- (5.) Where a soldier at the time of his enlistment be-

longed to any part of the auxiliary forces, the sum required to make good any compensation for which at the time of his enlistment he was under stoppage of pay as a member of the auxiliary forces, and any sum which he is liable to pay by reason of his quitting the said part of the auxiliary forces upon his enlistment ;

- (6.) Where a soldier's liquor ration is stopped by his commanding officer on board any ship, whether commissioned by Her Majesty or not, the sum equivalent to such ration, whether previously drawn by the soldier or not, not exceeding one penny a day for twenty-eight days ;
- (7.) The sum required to pay a fine awarded by a court-martial, his commanding officer, or a civil court ; and
- (8.) The sum required to pay any sum ordered by a Secretary of State to be paid as mentioned in this Act for the maintenance of his wife or child, or of any bastard child, or towards the cost of any relief given by way of loan to his wife or child ;

Provided that—

- (a.) The total amount of deductions from the ordinary pay due to a soldier in respect of the sums required to pay any compensation, fine, or sum awarded or ordered to be paid as aforesaid by a court-martial, commanding officer, or Secretary of State, shall not exceed such sum as will leave to the soldier, after paying for his messing and washing, less than one penny a day ; and
- (b.) a person shall not be subjected in respect of any compensation, fine, or sum awarded or ordered to be paid as aforesaid, to any deductions greater than is sufficient to make good the expenses, loss, damage, or destruction for which such compensation is awarded, or to pay the said sum.

(A.M.L.)

Part IV. The note to s. 137 applies to this section. Except under sub-sections (7) and (8) a deduction can only be made where the soldier has been found guilty of an offence by court-martial or his commanding officer.

Sub-section (1). The Royal (Pay, &c.) Warrant, provides that where the absence has not exceeded five days, the commanding officer has a discretion to enforce or not wholly or partially the deduction of the ordinary pay for absence, unless the soldier is convicted by a court martial, in which case the deduction is absolute. Where the absence exceeds five days, and in any other case mentioned in this sub-section, the deduction of pay is absolute, without any award by the commanding officer or otherwise. The commanding officer for the purpose of this section is the commanding officer as defined by Rule 128. See Q.R., 1885, Section VI, para. 12.

Under s. 140 (2) and the Royal Warrant, absence for less than six hours cannot reckon as a day of absence, unless two conditions are fulfilled, first, that it prevented the absentee from fulfilling a military duty, and second, that the duty was thrown upon some other person. The six hours should be reckoned consecutively, but it is immaterial whether they are partly in one day and partly in another. Thus, a soldier is liable to deprivation of one day's pay for any period of six hours' continuous absence without leave, and where the absence extends over twelve hours he is liable to deprivation of one day's pay in respect of any day reckoned from midnight to midnight during any portion of which he was absent. He is also liable to lose a day's pay for any day in which, by reason of his absence, however short, a duty that ought to be performed by him is thrown upon some other person.

For example, if a soldier is absent from 9 P.M. on Monday until 4 A.M. on Tuesday, his absence counts as a day's absence, but no more, although the absence was partly on one day and partly on another. If, however, he had returned at 1 A.M., his absence could not count as a day's absence, unless meanwhile he was bound to go on guard or perform some other military duty, and in consequence of his absence some other soldier had to go on guard or perform that duty.

If a soldier is absent from 6 P.M. on Monday until 6.5 A.M. on Tuesday, his absence may be reckoned as two days' absence, and it may also be so reckoned if he returns at 4 A.M. on Tuesday, and at 2 A.M. some other soldier had to go on guard instead of him.

If a soldier is absent from 6 P.M. on Monday to any hour on Friday, the commanding officer has a discretion as to enforcing the deduction of pay, because the absence has not exceeded five days, but if he returned at 2 A.M. on Saturday the commanding officer has no discretion, because the absence has exceeded five days, as the six hours on Monday reckon as one day, and the absence on

Saturday, though less than six hours, still makes the absence exceed five days. Part IV.

The competent military authority, under s. 73 (1), can order that the soldier shall forfeit his pay for every day of imprisonment under detention on a charge of desertion or fraudulent enlistment when he confesses his guilt and his trial is dispensed with. Under s. 140 (2), the imprisonment cannot count as a day of imprisonment unless it has lasted at least six hours.

Sub-section (2). This deduction is only authorised where the sickness is caused by an offence of which he has been found guilty, and therefore does not extend to sickness caused by immorality or intemperance, when there is no conviction. When the soldier is charged with the offence, the medical officer must himself give evidence, and his certificate is not sufficient.

Sub-section (3). As to the statement of the ground for compensation in the charge, see Rule 11 (F), and Appendix I, Note as to the use of Forms of Charges (23).

Under sub-sections (3) and (4) a soldier is not liable for the ordinary expenses of his prosecution, capture, or conveyance, or indirect losses of a similar kind. But where a prisoner refused to march, being able to do so, and a cab had to be hired for his conveyance, he was held liable for the expense thus incurred by his contumacy.

Dispensed with by order. As this is limited to an order under s. 73, a commanding officer who of his own authority abstains from sending an accused soldier for trial must dismiss the charge (see s. 46, Rule 4 (A) and note), and therefore cannot in the technical sense exercise any power under this sub-section of ordering any deduction from the soldier's pay.

Sub-section (4). *Buildings or property.* These words are not confined to public buildings, and consequently a soldier may be ordered to pay damages for broken windows or other slight damage done by him. A serious case of this sort is necessarily a case which should not be disposed of by a commanding officer.

Where a soldier has been convicted by court-martial for an offence, his commanding officer cannot subsequently award compensation for damage done by that offence.

Requires to be tried by court-martial. See s. 46 (8).

Sub-section (7). This sub-section will enable an officer to pay a fine imposed on a soldier by a civil court, and deduct it from his pay, and thus prevent the soldier from being imprisoned for non-payment of the fine. A court-martial or a commanding officer can only award a fine for drunkenness.

Sub-section (8). See s. 145, under which the Secretary of State can order this deduction, either of his own motion or in accordance with the order of the court.

Part IV. Proviso (a). If a soldier is subjected to a deduction in respect of one matter up to the full amount allowed by this proviso, any deduction subsequently imposed cannot begin to be enforced till the whole sum in respect of which the first deduction was imposed is satisfied. If a soldier under deductions not up to the full amount allowed by this proviso is subjected to a further deduction or deductions, which taken altogether would exceed that amount, the latter deductions must abate in order of priority, so that in no case may the soldier have less than the penny a day.

Proviso (b). The court will necessarily take care to find as accurately as possible the amount for which deductions are to be made from a soldier's pay, but as in some cases they will be unable to ascertain the amount accurately, and in others may be mistaken, care will have to be taken in enforcing their sentence not to contravene this proviso. The sentence of the court will not justify any deduction which exceeds the actual loss.

If a soldier is sentenced to stoppages for losing by neglect articles of his clothing or equipments, and these articles are afterwards found and in serviceable condition, he has "made good" the loss. Where two prisoners were convicted of having jointly injured public property, each was held to be rightly sentenced to make good the whole amount of the injury sustained; and in the event of one prisoner dying, or otherwise ceasing to be amenable to the award, the whole amount might be legally levied upon the other. Where, however, both remained amenable, the stoppages would be properly divided between them in equal proportions.

The principle is, that stoppages are intended, not for punishment, but to compensate for loss sustained.

How deduction of pay may be remitted.

139. Any deduction of pay authorised by this Act may be remitted in such manner and by such authority as may be from time to time provided by Royal Warrant, and subject to the provisions of any such warrant may be remitted by the Secretary of State.

Supplemental as to deductions from ordinary pay.

140. (1.) Any sum authorised by this Act to be deducted from the ordinary pay of an officer or soldier may, without prejudice to any other mode of recovering the same, be deducted from the ordinary pay or from any sums due to such officer or soldier in such manner, and when deducted or recovered may be appropriated in such manner, as may be from time to time directed by any regulation or order of the Secretary of State.

(2.) And any such regulation or order may from time to time declare what shall be deemed for the purposes of the provisions of this Act relating to deductions from pay to constitute a day of absence, or a day of imprisonment, so, however, that no time shall be so reckoned as a day unless the absence or imprisonment has lasted for six hours or upwards, whether wholly in one day or partly in one day and partly in another, or unless such absence prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person. Part IV.

(3.) In cases of doubt as to the proper issue of pay or the proper deduction from pay due to any officer or soldier, the pay may be withheld until Her Majesty's order respecting it has been signified through a Secretary of State, which order shall be final.

Sub-section (1). *Sums due.* This will allow the amount to be deducted from prize money or other sums due to an officer or soldier.

Sub-section (2). *Day of absence.* See Royal (Pay, &c.) Warrant, and note to s. 138 (1).

141. Every assignment of, and every charge on, and every agreement to assign or charge any deferred pay, or military reward payable to any officer or soldier of any of Her Majesty's forces, or any pension, allowance, or relief payable to any such officer or soldier, or his widow, child, or other relative, or to any person in respect of any military service, shall, except so far as the same is made in pursuance of a Royal Warrant for the benefit of the family of the person entitled thereto, or as may be authorised by any Act for the time being in force, be void. Prohibition of assignment of military pay, pensions, &c.

The assignment of pay by an officer or soldier in full pay is void by law, independently of this enactment.

Authorised by any Act. This refers to 2 & 3 Vict., c. 51, authorising the assignment, in certain cases, of a pension to guardians of the poor giving relief to the pensioner or his family.

142. (1.) Where any regulations made by the Secretary of State or the Commissioners of Her Majesty's Treasury, Punishment of false oath and personation.

Part IV. with respect to the payment of any military reward, pension, or allowance, or any sum payable in respect of military service, or with respect to the payment of money or delivery of property in the possession of the military authorities, provide for proving, whether on oath or by statutory declaration, the identity of the recipient or any other matter in connection with such payment, such oath may be administered and declaration taken by the persons specified in the regulations, and any person who in such oath or declaration wilfully makes any false statement shall be liable to the punishment of perjury.

(2.) Any person who falsely represents himself to any military, naval, or civil authority to belong to or to be a particular man in the regular, reserve, or auxiliary forces shall be deemed to be guilty of personation.

(3.) Any person who is guilty of an offence under the 37 & 38 Vict. c. 36. False Personation Act, 1874, in relation to any military pay, reward, pension, or allowance, or to any sum payable in respect of military service, or to any money or property in the possession of the military authorities, or is guilty of personation under this section, shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding twenty-five pounds.

(4.) Provided that nothing in this section shall prevent any person from being proceeded against and punished under any other enactment or at common law in respect of any offence, so that he be not punished twice for the same offence.

If a man personates another with intent to obtain any money or property he is guilty of an offence under the False Personation Act, 1874, and, if convicted at the assizes, is liable to penal servitude for life. In a very serious case a man might be indicted under that Act; in trivial cases it will be better to prosecute under the present section.

Under this section a man who falsely represents himself to any authority to belong to part of Her Majesty's forces, or to be a particular man in any of Her Majesty's forces, may be punished,

although he does not do it with intent to obtain any money. But it will not be desirable to institute a prosecution in such cases, unless the man has, in fact, obtained some advantage, or has put the authorities to expense and inconvenience. Care must be taken not to prosecute a man for what may be mere idle talk or bravado, without any guilty intention. Part IV.

In this, as in every other case of an offence punishable by a court of summary jurisdiction, a person who aids and abets the offence is, in England, equally punishable with the principal offender. Consequently, if A personates B, a reserve man, and thereby obtains B's pay, and hands the pay over to B or B's wife, B or B's wife is punishable as aiding and abetting the offence of personation by A.

An army reserve man who commits any offence under subsections (2) or (3) in the presence of an officer may, at the discretion of the officer, be ordered into either military or civil custody; and in the latter case will be tried before a court of summary jurisdiction. Reserve Forces Act, s. 6 (3).

Exemptions of Officers and Soldiers.

143. (1.) All officers and soldiers of Her Majesty's regular forces on duty or on the march; and Exemptions
of officers
and soldiers
from tolls,

Their horses and baggage; and

All prisoners under military escort; and

All carriages and horses belonging to Her Majesty or employed in her military service, when conveying any such persons as above in this section mentioned, or baggage or stores, or returning from conveying the same,

shall be exempted from payment of any duties or tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing-place, or in passing along or over any turnpike or other road or bridge otherwise demandable by virtue of any Act of Parliament already passed or hereafter to be passed, or by virtue of any Act, Ordinance, Order, or direction of the legislature or other authority in India or any colony.

Provided that nothing in this section shall exempt any boats, barges, or other vessels employed in conveying the

Part IV. said persons, horses, baggage, or stores along any canal from payment of tolls in like manner as other boats, barges, and vessels.

(2.) When any soldiers have occasion in their march by route to pass regular ferries in Scotland, the officer commanding may, at his option, pass over with his soldiers as passengers and shall pay for himself and each soldier one-half only of the ordinary rate payable by single persons, or may hire the ferry boat for himself and his party, debarring others for that time, and shall in all such cases pay only half the ordinary rate for such boat.

(3.) Any person who demands and receives any duty, toll, or rate in contravention of this section shall, on summary conviction be liable to a fine not exceeding five pounds nor less than ten shillings.

Sub-section (1). *Regular forces.* This expression includes the Marines and Her Majesty's Indian forces, also the reserve forces when subject to military law.

The exemption is not a personal one, but is confined to officers and soldiers when on duty or on the march: thus an officer driving from his private house to barracks would not be entitled to the exemption.

For definition of India and colony, see s. 190 (21), (23).

Sub-section (3). *On summary conviction*, see ss. 166-169.

Exemptions
of soldiers in
respect of
civil process.

144. (1.) A soldier of Her Majesty's regular forces shall not be liable to be taken out of Her Majesty's service by any process, execution, or order of any court of law or otherwise, or to be compelled to appear in person before any court of law, except in respect of the following matters, or one of them; that is to say,

- (a.) On account of a charge or conviction for crime ;
- or
- (b.) On account of any debt, damages, or sum of money, when the amount exceeds thirty pounds over and above all costs of suit.

(2.) For the purposes of this section a crime shall mean a felony, misdemeanour, or other crime or offence punish-

able, according to the law in force in that part of Her Majesty's dominions in which such soldier is, with fine or imprisonment or some greater punishment, and shall not include the offence of a person absenting himself from his service, or neglecting to fulfil his contract, or otherwise misconducting himself respecting his contract. Part IV.

(3.) For the purposes of this section a court of law shall be deemed to include a court of summary jurisdiction and any magistrate.

(4.) The amount of the debt, damages, or sum shall be proved for the purpose of any process issued before the court has adjudicated on the case by an affidavit of the person seeking to recover the same or of some one on his behalf, and such affidavit shall be sworn, without payment of any fee, in the manner in which affidavits are sworn in the court in which proceedings are taken for the recovery of the sum, and a memorandum of such affidavit shall, without fee, be indorsed upon any process or order issued against a soldier.

(5.) All proceedings and documents in or incidental to a process, execution, or order in contravention of this section shall be void ; and where complaint is made by a soldier or his commanding officer that such soldier is dealt with in contravention of this section by any process, execution, or order issued out of any court, and is made to that court or to any court superior to it, the court, or some judge thereof, shall examine into the complaint, and shall, if necessary, discharge such soldier without fee, and may award reasonable costs to the complainant, which may be recovered as if costs had been awarded in his favour in any action or other proceeding in such court.

Provided that—

- (1.) Any person having cause of action or suit against a soldier of the regular forces may, notwithstanding anything in this section, after due notice in writing given to the soldier, or left at his last

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quarters, proceed in such action or suit to judgment, and have execution other than against the person, pay, arms, ammunition, equipments, instruments, regimental necessities, or clothing of such soldier; and

- (2.) This section shall not prevent such proceeding with respect to apprentices and indentured labourers as is authorised by this Act.

The history of this section is given in Clode, Mil. Forc., i, 208. It exempts a soldier from appearing in person, though not from being sued for a debt under £30.

As to apprentices and indentured labourers, see ss. 96, 97, and sch. I.

Liability of soldier to maintain wife and children.

145. (1.) A soldier of the regular forces shall be liable to contribute to the maintenance of his wife and of his children, and also to the maintenance of any bastard child of which he may be proved to be the father, to the same extent as if he were not a soldier; but execution in respect of any such liability or of any order or decree in respect of such maintenance shall not issue against his person, pay, arms, ammunition, equipments, instruments, regimental necessities, or clothing, nor shall he be liable to be punished for the offence of deserting or neglecting to maintain his wife or family, or any member thereof, or of leaving her or them chargeable to any union, parish, or place.

(2.) When any order or decree is made under any Act or at common law for payment by a soldier of the regular forces either of the cost of the maintenance of his wife or child, or of any bastard child of whom he is the putative father, or of the cost of any relief given to his wife or child by way of loan, a copy of such order or decree shall be sent to a Secretary of State, and in the case—

- (a.) Of such order or decree being so sent; or
 (b.) Of it appearing to the satisfaction of a Secretary of State that a soldier of the regular forces has deserted or left in destitute circumstances, with—

out reasonable cause, his wife or any of his legitimate children under fourteen years of age, Part IV.

the Secretary of State shall order a portion not exceeding sixpence of the daily pay of a non-commissioned officer who is not below the rank of serjeant, and not exceeding threepence of the daily pay of any other soldier, to be deducted from such daily pay, and to be appropriated, in the first case, in liquidation of the sum adjudged to be paid by such order or decree, and, in the second case, towards the maintenance of such wife or children, in such manner as the Secretary of State thinks fit.

(3.) Where a proceeding is instituted against a soldier of the regular forces under any Act, or at common law, for the purpose of enforcing against him any such liability as above in this section mentioned, and such soldier is quartered out of the jurisdiction of the court, or, if the proceeding is before a court of summary jurisdiction, out of the petty sessional division in which the proceeding is instituted, the process shall be served on the commanding officer of such soldier, and such service shall not be valid unless there be left therewith, in the hands of the commanding officer, a sum of money (to be adjudged as costs incurred in obtaining the order or decree, if made against the soldier) sufficient to enable him to attend the hearing of the case and return to his quarters, and such sum may be expended by the commanding officer for that purpose; and no process whatever under any Act or at common law in any proceeding in this section mentioned shall be valid against a soldier of the regular forces if served after such soldier is under orders for service beyond the seas.

The Queen's Regulations, 1885, Sect. XIX, para. 179, provide for handing over to the parish authority in certain cases a married soldier who on attestation falsely represented himself to be single.

Sub-section (3). *Court of summary jurisdiction.* See definition in s. 190 (35).

146. A person who is commissioned and in full pay as an Officers not

Part IV officer in Her Majesty's regular forces shall not be capable
 to be sheriffs of being nominated or elected to be sheriff of any county,
 or mayors. borough, or other place, or to be mayor or alderman of, or
 to hold any office in, any municipal corporation in any
 city, borough, or place in the United Kingdom.

It is generally understood that officers on full pay and soldiers are exempt from serving all offices which require the personal discharge of duty, and do not admit of the appointment of a deputy. See Chapter V, para. 8.

Exemption from jury. 147. Every soldier in Her Majesty's regular forces shall be exempt from serving on any jury.

See Chapter V, para. 8.

Court of Requests in India.

Military court of requests in India. 148. (1.) Where any part of Her Majesty's regular forces is serving in India beyond the jurisdiction of any court of small causes established by or under the authority of the Governor-General of India in Council, actions of debt and personal actions against officers and other persons subject to military law, with the exception of persons being soldiers of the regular forces, which would be cognizable by such court of small causes if the said part of Her Majesty's regular forces were within the jurisdiction of the court, shall be cognizable before a court of requests composed of officers, and not elsewhere ; provided that—

- (a.) The value in question does not exceed four hundred rupees ; and
- (b.) The defendant was a person of the above description, when the cause of action arose ; and
- (c.) Nothing in this Act shall enable an action to be brought in a military court of requests by an officer or soldier of the regular forces against an officer of the regular forces.

(2.) The commanding officer of any camp, garrison, cantonment, or military post is hereby empowered to convene any such court.

(3.) Whenever, owing to paucity of officers, or to any other cause, a court of requests cannot conveniently be held at the place where the defendant may be, the officer commanding the division or district may authorise a court to be convened by the officer commanding at the nearest place where such court can be formed.

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Sections 148-151 provide for the recovery by civilian creditors of debts incurred by officers and other persons subject to military law (other than soldiers) when serving in India; such debts being recoverable, if the debtor is within the jurisdiction of a civil court, before such court; and elsewhere before a military court of requests. The sections apply to natives of India.

A commanding officer before convening a court of requests must be careful to see that the claimant is not a soldier, that the claim does not exceed 400 rupees, and that there is no court of small causes having jurisdiction in the place; otherwise a court convened by him would have no jurisdiction. If the claim exceeds 400 rupees, recourse must be had to a civil court or court of small causes; see section 151.

The following extract from a memorandum of the Judge Advocate-General was circulated in India in the year 1851, in consequence of it having been brought to the notice of the Commander-in-Chief that courts of requests, previously to passing decrees on officers sued before them, had been accustomed to take into consideration engagements entered into by such officers for the payment of monthly instalments to banks:—

“Nothing can be clearer than these two points—

“First, that the whole of an officer's pay coming to him in any month is available to satisfy decrees of courts of requests to the extent sanctioned by the Mutiny Act, s. 66” (which corresponds to s. 150 of this Act).

“Secondly, that an officer having given orders on his pay for instalments in favour of a bank, presents no bar to the decrees of courts of requests being satisfied. * * * * *

Half an officer's entire pay and allowances, is liable to be appropriated to satisfy decrees of courts of requests, notwithstanding any other disposition of it, or any part of it, which an officer may have made. These decrees supersede and push aside any orders on his pay which an officer may have previously given. It is therefore unjust to put off the liquidation of the proved demands of creditors, in order to give a preference of payment to a bank, or so as to let the defendant retain half of his pay entire.”

149. (1.) Courts of request under this Act shall in all Constitution and proceed-

Part IV. practicable cases consist of five officers, and in no instance of less than three.

ings of mili-
tary court
of requests.

(2.) The president thereof shall in all practicable cases be a field officer, and in no case be under the rank of a captain.

(3.) Every member shall have served not less than five years as a commissioned officer.

(4.) Before any proceedings are had before such court the president and members shall take the following oath, which oath shall be administered by the president of the court to the other members thereof, and to the president by any sworn member; (that is to say,)

' You swear that you will duly
' administer justice according to the evidence in the
' matters brought before you. So help
you GOD.'

(5.) All witnesses before any such court shall be sworn and examined in the like manner as in the case of a trial by court-martial, and shall be liable to the same punishment for giving false evidence.

(6.) The provisions of this Act with respect to the substitution of a solemn declaration for an oath in the case of a court-martial shall apply as if they were enacted in this section, and in terms made applicable thereto.

Care must be taken to ascertain on the assembling of the court that every member has held his commission for at least five years.

Evidence will be given subject to the same rules as evidence before a court-martial, and the president should take notes of the substance of it; the court may be cleared on any interruption or for the purpose of deliberation: the president may sum up the case to the members on its conclusion, and must sign the finding of the court.

Punishment for giving false evidence. See ss. 29, 52, 126 (2).

Solemn declaration. See s. 52 (4).

Execution of
judgment of
military
court of
requests.

150. (1.) A military court of requests held in India under the authority of this Act, on adjudging payment of any sum by any person subject to military law (in this section

referred to as the debtor), may either award execution **Part IV.** thereof generally, or direct specially that the amount named in the direction, being the whole or any part of the said sum, shall be paid by instalments or otherwise out of any pay or other public money payable to the debtor, and the amount named in the direction, not exceeding one-half of such pay and public money, shall, while the debtor is in India, be stopped and paid in conformity with the direction.

(2.) Where execution is awarded generally by a military court of requests, the sum, if not paid forthwith, shall be levied by seizure and public sale of such of the property of the debtor as may be found within the camp, garrison, cantonment, or military post to which the debtor belongs, and, if the proceeds are insufficient to pay the said sum, as may be found within the limits of a camp, garrison, cantonment, or military post in India to which the debtor may belong at any subsequent time.

(3.) The levy and seizure shall be made under a written order of the commanding officer of such camp, garrison, cantonment, or military post, grounded on the judgment of the court.

(4.) The arms and equipment of a debtor shall not be liable to be seized or sold under this section.

(5.) All orders of the commanding officer as to the manner of such sale, or the person by whom the same shall be made, or otherwise respecting the same shall be duly observed; and if any question arises whether any such property is liable to be seized or sold as aforesaid, the decision of the said commanding officer thereon shall be final.

(6.) If sufficient property is not found within the limits of the camp, garrison, cantonment, or military post, then any pay or public money (not exceeding one-half) accruing to the debtor shall, while the debtor is in India, be stopped, in liquidation of the said sum.

(7.) If the debtor does not receive pay as an officer or

Part IV. from any public department, he may be arrested by order of the commanding officer of the camp, garrison, cantonment, or military post, and imprisoned in some convenient place within the camp, garrison, cantonment, or military post, for any period not exceeding two months, unless the said sum be sooner paid.

(8.) The commanding officer shall not, nor shall any person acting on his orders in respect of the matters aforesaid, incur any liability to any person whomsoever for any act done by him in execution or intended execution of the provisions of this section.

The court may under this section either stop half or any less proportion of the debtor's pay receivable by him as an officer or from any public department; or may award execution against the debtor's property other than his arms and equipment. The orders of the commanding officer as to time and manner of sale of the property and otherwise are final; and neither he nor any person acting under his orders will incur any liability for anything done in carrying into effect this section. It will be observed that the stoppage of pay can only be made while the debtor is in India.

One-half of the pay and public money means one-half of the full pay without any deduction on account of regimental subscriptions or liabilities.

Courts of
small causes
and civil
courts in
India.

151. (1.) In India all actions of debt and personal actions against persons subject to military law, other than soldiers of the regular forces, within the jurisdiction of any court of small causes, shall be cognizable by such court to the extent of its powers.

(2.) All such actions where the amount sued for exceeds four hundred rupees shall be cognizable by a civil court or court of small causes only.

(3.) A civil court or court of small causes, upon adjudging payment of any sum by any person subject to military law other than a soldier of the regular forces, may either award execution thereof generally, or may direct specially that the amount named in the direction,

being the whole or any part of the said sum, shall be paid by instalments or otherwise out of any pay or other public money payable to the debtor, and the amount named in the direction, not exceeding one-half of such pay and public money, shall, while the debtor is in India, be stopped and paid in conformity with the direction.

(4.) In regard to award of execution generally, a civil court or court of small causes shall proceed in accordance with the rules of procedure of such court in India.

A civil court or court of small causes can, like a court of requests, either stop the pay of debtor or award execution (see note to s. 150); and in awarding and enforcing execution will be guided by its ordinary rules.

Legal Penalties in Matters respecting Forces.

152. Any person who falsely represents himself to any military, naval, or civil authority to be a deserter from Her Majesty's regular forces, shall on summary conviction be sentenced to be imprisoned, with or without hard labour, for any period not exceeding three months.

Punishment for pretending to be a deserter.

Her Majesty's regular forces. See definition in s. 190 (8).

On summary conviction. See ss. 166-168.

153. Any person who in the United Kingdom or elsewhere by any means whatsoever—

Punishment for inducing soldiers to desert.

- (1.) Procures or persuades any soldier to desert, or attempts to procure or persuade any soldier to desert; or
- (2.) Knowing that a soldier is about to desert, aids or assists him in deserting; or
- (3.) Knowing any soldier to be a deserter, conceals such soldier; or aids or assists him in concealing himself, or aids or assists in his rescue,

shall be liable on summary conviction to be imprisoned, with or without hard labour, for a term not exceeding six months.

On summary conviction. See ss. 166-168.

(A.M.L.)

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Part IV. 154. With respect to deserters the following provisions shall have effect :

Apprehen-
sion of
deserters.

- (1.) Upon reasonable suspicion that a person is a deserter, it shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or soldier or other person, to apprehend such suspected person, and forthwith to bring him before a court of summary jurisdiction :
- (2.) A justice of the peace, magistrate, or other person having authority to issue a warrant for the apprehension of a person charged with crime may, if satisfied by evidence on oath that a deserter is or is reasonably suspected to be within his jurisdiction, issue a warrant authorising such deserter to be apprehended and brought forthwith before a court of summary jurisdiction :
- (3.) Where a person is brought before a court of summary jurisdiction charged with being a deserter under this Act, such court may deal with the case in like manner as if such person were brought before the court charged with an indictable offence, or in Scotland an offence :
- (4.) The court, if satisfied either by evidence on oath or by the confession of such person that he is a deserter shall forthwith, as it may seem to the court most expedient with regard to his safe custody, cause him either to be delivered into military custody, in such manner as the court may deem most expedient, or, until he can be so delivered, to be committed to some prison, police station, or other place legally provided for the confinement of persons in custody, for such reasonable time as appears to the court reasonably necessary for the purpose of delivering him into military custody :

- (5.) Where the person confessed himself to be a deserter, **Part IV.** and evidence of the truth or falsehood of such confession is not then forthcoming, the court shall remand such person for the purpose of obtaining information as to the truth or falsehood of the said confession, and for that purpose the court shall transmit, if sitting in the United Kingdom, to a Secretary of State, and if in India to the general or other officer commanding the forces in the military district or station where the court sits, and if in a colony to the general or other officer commanding the forces in that colony, a return (in this Act referred to as a descriptive return) containing such particulars and being in such form as is specified in the Fourth Schedule to this Act, or as may be from time to time directed by a Secretary of State :
- (6.) The court may from time to time remand the said person for a period not exceeding eight days in each instance, and not exceeding in the whole such period as appears to the court reasonably necessary for the purpose of obtaining the said information :
- (7.) Where the court causes a person either to be delivered into military custody or to be committed as a deserter, the court shall send, if in the United Kingdom, to a Secretary of State, and if in India or a colony to the general or other officer commanding as aforesaid, a descriptive return in relation to such deserter, for which the clerk of the court shall be entitled to a fee of two shillings :
- (8.) A Secretary of State shall direct payment of the said fee.

This section provides for the apprehension of suspected deser-
(A.M.L.)

Part IV

ters by the civil power and for the delivery of deserters into military custody. It will be observed that a court of summary jurisdiction—that is the justices or police magistrate, or in Scotland the sheriff, s. 190 (35)—must be satisfied by evidence on oath or by the confession of the person apprehended, that he is a deserter, before delivering him to the military authorities.

There is no obligation on the military authority to take over a man committed as a deserter, and in certain circumstances it is their duty not to do so. See Q.R., 1885, Sect. VI, para. 132.

For definition of India and colony, see s. 190 (21), (23).

Penalty on trafficking in commissions, 34 & 35 Vict. c. 86.

155. Every person (except the Army Purchase Commissioners, and persons acting under their authority by virtue of the Regulation of the Forces Act, 1871) who negotiates, acts as agent for, or otherwise aids or connives at—

- (1.) The sale or purchase of any commission in Her Majesty's regular forces ; or
- (2.) The giving or receiving of any valuable consideration in respect of any promotion in or retirement from such forces, or any employment therein ; or
- (3.) Any exchange which is made in manner not authorised by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which any sum of money or other consideration is given or received,

shall be liable on conviction on indictment or information to a fine of one hundred pounds, or to imprisonment for any period not exceeding six months, and if an officer, on conviction by court-martial, to be dismissed the service.

Penalty on purchasing from soldiers regimental necessaries, equipments, stores, &c

156. (1.) Every person who—

- (a.) Buys, exchanges, takes in pawn, detains, or receives from a soldier, or any person acting on his behalf, on any pretence whatsoever ; or
- (b.) Solicits or entices any soldier to sell, exchange, pawn, or give away ; or

- (c.) Assists or acts for a soldier in selling, exchanging, **Part IV.**
pawning, or making away with,

any of the property following ; namely, any arms, ammunition, equipments, instruments, regimental necessities, or clothing, or any military decorations of an officer or soldier, or any furniture, bedding, blankets, sheets, utensils, and stores in regimental charge, or any provisions or forage issued for the use of an officer or soldier, or his horse, or of any horse employed in Her Majesty's service, shall, unless he proves either that he acted in ignorance of the same being such property as aforesaid, or of the person with whom he dealt being or acting for a soldier, or that the same was sold by order of a Secretary of State or some competent military authority, be liable on summary conviction, in the case of the first offence, to a fine not exceeding twenty pounds, together with treble the value of any property of which such offender has become possessed by means of his offence ; and in the case of a second offence, to a fine not less than five pounds and not exceeding twenty pounds, together with treble the value of any property of which such offender has become possessed by means of his offence, or to imprisonment, with or without hard labour, for a term not exceeding six months.

(2.) Where any such property as above in this section mentioned is found in the possession or keeping of any person, such person may be taken or summoned before a court of summary jurisdiction, and if such court have reasonable ground to believe that the property so found was stolen, or was bought, exchanged, taken in pawn, obtained or received in contravention of this section, then if such person does not satisfy the court that he came by the property so found lawfully and without any contravention of this Act, he shall be liable on summary conviction to a penalty not exceeding five pounds.

(3.) A person charged with an offence against this

Part IV. section, and the wife or husband of such person, may, if he or she think fit, be sworn and examined as an ordinary witness in the case.

(4.) A person found committing an offence against this section may be apprehended without warrant, and taken, together with the property which is the subject of the offence, before a court of summary jurisdiction; and any person to whom any such property as above mentioned is offered to be sold, pawned, or delivered, who has reasonable cause to suppose that the same is offered in contravention of this section, may, and if he has the power shall, apprehend the person offering such property, and forthwith take him, together with such property, before a court of summary jurisdiction.

(5.) A court of summary jurisdiction, if satisfied on oath that there is reasonable cause to suspect that any person has in his possession, or on his premises, any property on or with respect to which any offence in this section mentioned has been committed, may grant a warrant to search for such property, as in the case of stolen goods; and any property found on such search shall be seized by the officer charged with the execution of such warrant, who shall bring the person in whose possession the same is found before some court of summary jurisdiction, to be dealt with according to law.

(6.) For the purposes of this section property shall be deemed to be in the possession or keeping of a person if he knowingly has it in the actual possession or keeping of any other person, or in any house, building, lodging, apartment, field, or place, open or enclosed, whether occupied by himself or not, and whether the same is so had for his own use or benefit, or for the use or benefit of another.

(7.) Articles which are public stores within the meaning of the Public Stores Act, 1875, and are not included in the foregoing description, shall not be deemed to be stores

issued as regimental necessities or otherwise within the meaning of section thirteen of that Act. Part IV.

(8.) It shall be lawful for the Governor-General of India or for the legislature of any colony, on the recommendation of the Governor thereof, but not otherwise, by any law or ordinance to reduce a minimum fine under this section to such amount as may to such Governor-General or legislature appear to be better adapted to the pecuniary means of the inhabitants.

This section applies to natives of India and to the arms, &c., of Indian soldiers.

Sub-section (8). It will be observed that this sub-section permits a person charged with an offence as well as his or her wife or husband to be examined as a witness in the case.

For definition of India, colony, court of summary jurisdiction, and horse, see s. 190 (21), (23), (35), (40).

Jurisdiction.

157. Where a person subject to military law has been acquitted or convicted of an offence by a court-martial, he shall not be liable to be tried again by a court-martial in respect of that offence. Person not to be tried twice.

Where a court is illegally constituted—as, for example, if convened by an officer not authorised to convene it, or if composed of too few members—it is no court at all, and therefore the prisoner will not really have been tried, and may be tried again.

So also, a finding of conviction if not confirmed is of no validity (s. 54 (6)), and the prisoner therefore in such a case has not been convicted, and can be tried again. See Chapter III, para. 5.

The principle of law is that a man shall not be tried twice in respect of the same offence. If on a second trial of a man the charge is for the same kind of offence as on the first trial, and the facts as disclosed by the particulars and the evidence are substantially the same, the second trial is void.

Where on the second trial the charge is for a different offence or the particulars refer to a different set of facts, the second trial is valid, but an offence of which under s. 56 the man could have been convicted on the first trial is not a different offence.

Thus, a man charged under s. 33 with a false answer on his

Part IV. — attestation in saying that he had not served before in the army, whereas he had served in the Berkshire regiment, may be charged on a second trial with an offence under s. 32 although committed on the same attestation, but he cannot be tried a second time on a charge under s. 33 for a false answer given at the same attestation, although he may also have served in the Somersetshire regiment or in the militia.

Liability to
military law
in respect of
status.

158. (1.) Where an offence under this Act has been committed by any person while subject to military law, such person may be taken into and kept in military custody, and tried and punished for such offence, although he, or the corps or battalion to which he belongs, has ceased to be subject to military law, in like manner as he might have been taken into and kept in military custody, tried or punished, if he or such corps or battalion had continued so subject :

Provided that where a person has since the commission of an offence ceased to be subject to military law, he shall not be tried for such offence, except in the case of the offence of mutiny, desertion, or fraudulent enlistment unless his trial commences within three months after he has ceased to be subject to military law ; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court as well as by court-martial.

(2.) Where a person subject to military law is sentenced by court-martial to penal servitude or imprisonment, this Act shall apply to him during the term of his sentence, notwithstanding that he is discharged or dismissed from Her Majesty's service, or has otherwise ceased to be subject to military law, and he may be kept, removed, imprisoned, and punished accordingly as if he continued to be subject to military law.

This section arises out of the difference between the status of a soldier and the status of a civilian. A soldier, using the term in its larger sense, repeatedly changes his status from soldier to civilian and from civilian to soldier. In the regular forces this change takes place when a soldier is transferred to the reserve,

when he comes back from the reserve to the army on being called out for permanent service or for training, and again when he returns to civil life on being released from service or at the end of his training. A militiaman, as a general rule, is for a short time only in every year under military law, and returns again to his civil status in the same year. The volunteers, again, are constantly changing their status, as they are subject to military law when they are acting with the regular forces, and are not subject to that law under other circumstances, except when on actual service.

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This section then provides that if a person while subject to military law commits a military offence, he may be punished for that offence, though he may have changed his status before he is tried; but he can be tried only within three months after the military status ceases. An exception is made with respect to mutiny, desertion, and fraudulent enlistment, as these offences may be tried at any time after they have been committed, subject to the restrictions in s. 161. Further exemptions are made by the Reserve Forces Act, 1882, s. 26 (2), and the Militia Act, 1882, s. 43 (2).

The section further enacts that a sentence for a military offence shall not be affected by the offender being discharged or dismissed, or otherwise ceasing to be subject to military law.

It has been ruled by the Judge Advocate-General that a militiaman sentenced by his commanding officer to imprisonment during his period of training, can be kept in prison for the whole term of his sentence, although the period of training expires before the expiration of the sentence.

159. Any person subject to military law who within or without Her Majesty's dominions commits any offence for which he is liable to be tried by court-martial, may be tried and punished for such offence at any place (either within or without Her Majesty's dominions) which is within the jurisdiction of an officer authorised to convene general courts-martial, and in which the offender may for the time being be, in the same manner as if the offence had been committed where the trial by court-martial takes place, and the offender were under the command of the officer convening such court-martial.

Liability to military law in respect of place of commission of offence.

This section provides that an offender may be tried by court-martial anywhere, so long as he is tried within the jurisdiction of an officer authorised to convene general courts-martial.

Part IV. 160. No person shall be subject to any punishment or penalties under the provisions of this Act other than those which could have been inflicted if he had been tried in the place where the offence was committed.

Punishment not increased by trial elsewhere than offence committed.

This enactment seems useless, as an difference in punishment under the Act is not dependent on the place of trial.

Liability to military law in respect of time for trial of offences.

161. A person shall not in pursuance of this Act be tried or punished for any offence triable by court-martial committed more than three years before the date at which his trial begins, except in the case of the offence of mutiny, desertion, or fraudulent enlistment; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court, as well as by court-martial; and where a soldier has served continuously in an exemplary manner for not less than three years in any corps of Her Majesty's regular forces, he shall not be tried for any such offence of desertion (other than desertion on active service), or of fraudulent enlistment, as was committed before the commencement of such three years, but where such offence was fraudulent enlistment, all service prior to such enlistment shall be forfeited.

The effect of this section is that on the expiration of three years from the commission of an offence, the offender is free from being tried or punished under this Act by court-martial, for any offence, except mutiny, desertion, or fraudulent enlistment. Mutiny may be tried at any time. With regard to desertion and fraudulent enlistment, it is provided that except in the case of one of the greatest of all military crimes—desertion on active service—he is not to be tried for the offence if he has served continuously in an exemplary manner for three years in a corps of the regular forces. In the case of fraudulent enlistment, inasmuch as he has chosen to quit his old corps and enter into a new contract to serve for a further term of years, he will be held to serve according to that contract and will not reckon any of his prior service.

In an exemplary manner. This means that the man has had no entry in the regimental defaulter sheet for a continuous period of three years, Q.R., 1885, Sect. VI, para. 37.

162. (1.) If a person sentenced by a court-martial in Part IV. pursuance of this Act to punishment for an offence is afterwards tried by a civil court for the same offence that court shall, in awarding punishment, have regard to the military punishment he may already have undergone. Adjustment
of civil and
military
law.

(2.) Save as aforesaid, nothing in this Act shall exempt an officer or soldier from being proceeded against by the ordinary course of law, when accused or convicted of any offence, except such an offence as is declared not to be a crime for the purpose of the provisions of this Act relating to taking a soldier out of Her Majesty's service.

(3.) If an officer—

(a.) Neglects or refuses on application to deliver over to the civil magistrate any officer or soldier under his command who is so accused or convicted as aforesaid ; or

(b.) Wilfully obstructs or neglects or refuses to assist constables or other ministers of justice in apprehending any such officer or soldier,

such commanding officer shall, on conviction in any of Her Majesty's superior courts in the United Kingdom, or in a supreme court in India, be guilty of a misdemeanor.

(4.) A certificate of a conviction of an officer under this section, with the judgment of the court thereon, in such form as may be directed by a Secretary of State, shall be transmitted to such Secretary of State.

(5.) Any offence committed by any such commanding officer out of the United Kingdom shall, for the purpose of the apprehension, trial, and punishment of the offender, be deemed to have been committed within the jurisdiction of Her Majesty's High Court of Justice in England ; and such court shall have jurisdiction as if the place where the offence was committed or the offender may for the time being be were in England.

(6.) Where a person subject to military law has been acquitted or convicted of an offence by a competent civil

Part IV. court, he shall not be liable to be tried in respect of that offence under this Act.

This section, in effect, declares that a person subject to military law is not to be exempted from the civil law by reason of his military status, so that a person acquitted or convicted of an offence by a court-martial may still be tried by a civil court for the same offence, as being an offence against the civil law. Sub-section (1), however, provides in favour of the soldier, that a civil court in awarding punishment for an offence, shall have regard to any sentence which has been passed by a military court; while sub-section (6) further declares that where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he shall not be tried under military law for that offence.

As to sub-section (2), see s. 144.

Sub-section (5). It will be observed that an offence, though committed out of the United Kingdom, can be tried and punished in England. See also s. 170 (3).

Evidence.

Regulations
as to evi-
dence.

163. (1.) The following enactments shall be made with respect to evidence in proceedings under this Act, whether before a civil court or a court-martial; that is to say,

- (a.) The attestation paper purporting to be signed by a person on his being attested as a soldier, or the declaration purporting to be made by any person upon his re-engagement in any of Her Majesty's regular forces, or upon any enrolment in any branch of Her Majesty's service, shall be evidence of such person having given the answers to questions which he is therein represented as having given :

The enlistment of a person in Her Majesty's service may be proved by the production of a copy of his attestation paper purporting to be certified to be a true copy by the officer having the custody of the attestation paper without proof of the handwriting of such officer, or of his having the custody of the paper :

- (b.) A letter, return, or other document respecting the service of any person in or the discharge of any person from any portion of Her Majesty's forces or respecting a person not having served in or belonged to any portion of Her Majesty's forces, if purporting to be signed by or on behalf of a Secretary of State, or of the Commissioners of the Admiralty, or by the commanding officer of any portion of Her Majesty's forces, or of any of Her Majesty's ships, to which such person appears to have belonged, or alleges that he belongs or had belonged, shall be evidence of the facts stated in such letter, return, or other document :
- (c.) Copies purporting to be printed by a Government printer, of Queen's Regulations, of royal warrants, of army circulars, and of rules made by Her Majesty, or a Secretary of State, in pursuance of this Act, shall be evidence of such regulations, royal warrants, army circulars, and rules :
- (d.) An army list or gazette purporting to be published by authority, and either to be printed by a Government printer, or to be issued, if in the United Kingdom, by Her Majesty's Stationery Office, and if in India, by some office under the Governor-General of India or the Governor of any Presidency in India, shall be evidence of the status and rank of the officers therein mentioned, and of any appointment held by such officers, and of the corps or battalion or arm or branch of the service to which such officers belong :
- (e.) Any warrants or orders made in pursuance of this Act by any military authority shall be deemed to be evidence of the matters and things therein directed to be stated by or in pursuance of this Act, and any copies of such warrants or orders

Part IV.

purporting to be certified to be true copies by the officer therein alleged to be authorised by a Secretary of State or Commander-in-Chief to certify the same shall be admissible in evidence.

* * * * *

Sub-section (f) is repealed by the Reserve Forces Act, 1882, but is re-enacted in substance by s. 24 (2) of that Act for both the army and militia reserve.

(g.) Where a record is made in one of the regimental books in pursuance of any Act or of the Queen's Regulations, or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts thereby stated :

(h.) A copy of any record in one of the said regimental books purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record :

(i.) A descriptive return within the meaning of this Act, purporting to be signed by a justice of the peace shall be evidence of the matters therein stated.

(2.) For the purposes of this Act the expression "Government printer" means any printer to Her Majesty, and in India any Government press.

See generally as to evidence of documents, Chapter IV, paras. 30-40.

This section provides for the admissibility in evidence of a variety of documents or copies of documents used in the administration of military law, but does not make them conclusive evidence; therefore evidence may be given to contradict them.

In the case of such a document, for instance, as a letter respecting the service of a man, great caution is required as regards the identity of a prisoner with the person named in the document; and if the prisoner denies that the facts stated in any such document apply to him, independent evidence of identity must be obtained. See Rule 45 (B) and note.

(a.) *Purporting.* This expression in this and other sub-sections means that if the paper appears to be certified or to be signed as

mentioned in the sub-section, it can be accepted without calling a witness to prove that it has been so certified signed, &c., unless indeed some evidence is given to the contrary. If any evidence is produced casting a doubt on the authenticity of a document, the court should require evidence of the certificate or signature, &c., to be given by a witness. Part IV.

(g.) For the purpose of this sub-section it is important that the records in the regimental books should be signed by the proper officer, namely, the officer required by this Act, by the Queen's Regulations, 1885, or by his military duty, to make the record. A record not in the regimental books is not made evidence.

164. Whenever any person subject to military law has been tried by any civil court, the clerk of such court, or his deputy, or other officer having the custody of the records of such court, shall, if required by the commanding officer of such person, or by any other officer, transmit to him a certificate setting forth the offence for which the person was tried, together with the judgment of the court thereon if he was convicted, and the acquittal if he was acquitted, and shall be allowed for such certificate a fee of three shillings. Any such certificate shall be sufficient evidence of the conviction and sentence or of the acquittal of the prisoner, as the case may be. Evidence of civil conviction or acquittal.

The object of this section is to facilitate the proof of a conviction or acquittal by a civil court.

165. The original proceedings of a court-martial, purporting to be signed by the president thereof and being in the custody of the Judge Advocate-General, or of the officer having the lawful custody thereof, shall be deemed to be of such a public nature as to be admissible in evidence on their mere production from such custody; and any copy purporting to be certified by such Judge Advocate-General or his deputy authorised in that behalf, or by the officer having such custody as aforesaid, to be a true copy of such proceedings or of any part thereof, shall be admissible in evidence without proof of the signature of such Judge Advocate-General, deputy, or officer; and a Secretary of State, upon production of any such proceed- Evidence of conviction by court-martial.

Part IV. ings or certified copy, may, by warrant under his hand, authorise the offender appearing therefrom to have been convicted and sentenced to any punishment, to be imprisoned and otherwise dealt with in accordance with the sentence in the proceedings or certified copy mentioned.

This section facilitates the proof of transactions of courts-martial, by declaring that the proceedings or certified copies thereof shall be admissible in evidence.

Purporting. See note to s. 163. *Shall be deemed to be of such a public nature, &c.* See 14 & 15 Vict., c. 99, s. 14, which makes a certificate of the document by the officer having the custody of it admissible in evidence, and requires the officer to furnish certified copies upon payment of not more than 4d. for every folio of 90 words, and enacts a punishment for false copies, and for the forgery of the officer's signature or seal.

A Secretary of State, by warrant under his hand. The object of this is to avoid such difficulties as arose in Lieutenant Allen's case (see M.M.L., Chapter VIII, paras. 35-37), where there is no doubt that an officer or soldier convicted abroad has been properly convicted, but no proper warrant has been sent home authorising his detention in custody. See s. 172 (4) and note.

Summary and other Legal Proceedings.

Prosecution
of offences,
and recovery
and applica-
tion of fines.

166. (1.) A court of summary jurisdiction having jurisdiction in the place where the offence was committed, or in the place where the offender may for the time being be, shall have jurisdiction over all offences triable in a civil court under this Act, except any such offence as is declared by this Act to be a misdemeanor, or to be punishable on indictment; and any offence within the jurisdiction of a court of summary jurisdiction may be prosecuted, and the fine and forfeiture in respect thereof may be recovered on summary conviction, in manner provided by the Summary Jurisdiction Acts.

(2.) Any proceedings taken before a court of summary jurisdiction in pursuance of this Act shall be taken in accordance with the Summary Jurisdiction Acts so far as applicable.

(3.) A court of summary jurisdiction imposing a fine in

pursuance of this Act may, if it seem fit, order a portion of such fine not exceeding one-half to be paid to the informer. Part IV.

(4.) Where the maximum fine or imprisonment which a court of summary jurisdiction in England, when sitting in an occasional courthouse, is authorised by law to impose is less than the minimum fine or imprisonment fixed by this Act, the court may impose the maximum fine or imprisonment which such court is authorised by law to impose, but if required by either party, shall adjourn the case to the next practicable petty sessional court.

(5.) The court of summary jurisdiction in Ireland, when hearing and determining a case arising under this Act, shall be constituted either of two or more justices of the peace sitting at some court or public place at which justices are for the time being accustomed to assemble for the purpose of holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the public administration of justice and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

(6.) Subject to the provisions of this Act with regard to the payment to the informer, fines and other sums recovered before a court of summary jurisdiction in pursuance of this Act shall, notwithstanding anything contained in any other Act, if recovered in England, be paid into the Exchequer, and if recovered in Ireland, shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Acts amending the same. 14 & 15 Vict.
c. 90.

Sects. 166, 167, and 168 are the sections ordinarily inserted in modern Acts of Parliament for the recovery of fines and the prosecution of offences before justices of the peace, police magistrates, or in Scotland sheriffs, who are all referred to as courts of summary jurisdiction. See the definition in s. 190 (85).

See also as regards England, the Summary Jurisdiction Act, 1879 (42 and 43 Vict., c. 49); under which a court of summary

(A.M.L.)

Y

Part IV. jurisdiction in England must when trying a case consist of two justices or of a stipendiary magistrate.

Sub-section (4). Under the last-mentioned Act, two justices, if not sitting in a petty sessional courthouse, have only limited powers of fine and imprisonment; and such powers do not extend to imposing the minimum fine or imprisonment fixed in some cases by this Act. In such a case they may, under this sub-section, impose the maximum fine or imprisonment which they can impose in ordinary cases, i.e., 20s. or 14 days (42 & 43 Vict., c. 49, s. 20 (7)).

Summary
proceedings
in Scotland.

167. (1.) In Scotland, offences and fines which may be prosecuted and recovered on summary conviction may be prosecuted and recovered, and proceedings under this Act may be taken at the instance of the procurator fiscal of the court, or of any person in that behalf authorised by a Secretary of State or the Commander-in-Chief, or of any person authorised by this Act to complain.

27 & 28 Vict.
c. 53.

(2.) All fines under this Act in default of payment, and all orders made under this Act failing compliance, may be enforced by imprisonment for a term to be specified in the order or conviction, but not exceeding three months, and the conviction and warrant may be in the form number three of Schedule K of the Summary Procedure Act, 1864.

(3.) All fines and other sums recovered under this Act before a court of summary jurisdiction, subject to any payment made to the informer, shall be paid to the Queen's and Lord Treasurer's Remembrancer, on behalf of Her Majesty.

(4.) It shall be no objection to the competency of a person to give evidence as a witness in any prosecution for offences under this Act, that such prosecution is brought at the instance of such person.

(5.) Every person convicted of an offence under this Act shall be liable in the reasonable costs and charges of such conviction.

(6.) All jurisdictions, powers, and authorities necessary for the purposes of this Act are conferred on the sheriffs and their substitutes and on justices of the peace.

(7.) The court may make, and may also from time to time alter or vary, summary orders under this Act on petition by the procurator fiscal of the court, or such person as aforesaid, presented in common form. Part IV.

See also the Summary Jurisdiction (Scotland) Act, 1881, 44 & 45 Vict., c. 33.

168. All offences under this Act which may be prosecuted, and all fines under this Act which may be recovered on summary conviction, and all proceedings under this Act which may be taken before a court of summary jurisdiction, may be prosecuted and recovered and taken in the Isle of Man, Channel Islands, India, and any colony in such courts and in such manner as may be from time to time provided therein by law, or if no express provision is made, then in and before the courts and in the manner in which the like offences and fines may be prosecuted and recovered and proceedings taken therein by law, or as near thereto as circumstances admit.

Summary proceedings in Isle of Man, Channel Islands, India, and the colonies

For definitions of India and colony see s. 190 (21), (23).

169. It shall be lawful for the Governor-General of India, and for the legislature of any colony, to provide by law for reducing any fine directed by this Act to be recovered on summary conviction to such amount as may appear to the Governor-General or legislature to be better adapted to the pecuniary means of the inhabitants, and also to declare the amount of the local currency which is to be deemed for the purposes of this Act to be equivalent to any sum of British currency mentioned in this Act.

Power of Governor-General of India and legislature of colony as to fines.

170. (1.) Any action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect, or default complained of, or in case of a continuance of injury or damage, within twelve months next after the ceasing thereof.

Protection of persons under Act.

Part IV. (2.) In any such action tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after such tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendants shall be entitled to costs, to be taxed as between solicitor and client, as from the time of such tender or payment; but this provision shall not affect costs on any injunction in the action.

(3.) Every such action, and also every action against a member or minister of a court-martial in respect of a sentence of such court, or of anything done by virtue or in pursuance of such sentence, shall be brought in one of Her Majesty's superior courts in the United Kingdom (which courts shall have jurisdiction to try the same wherever the matter complained of occurred) or in a supreme court in India, or in any colonial court of superior jurisdiction, provided the matter complained of occurred within the jurisdiction of such Indian or Colonial court respectively, and in no other court whatsoever.

With respect to actions for damages and other proceedings against officers acting without jurisdiction or in excess of their jurisdiction, see M.M.L., Chapter VIII, para. 40. This section prevents any such action or other proceeding being instituted after the expiration of twelve months from the date of the act or default complained of.

Actions can be brought in courts at home in respect of acts done abroad. See M.M.L., Chapter VIII, paras. 56, 57.

Miscellaneous.

Exercise of powers vested in holder of military office.

171. Any power or jurisdiction given to, and any act or thing to be done by, to or before any person holding any military office may be exercised by, or done by, to, or before any other person for the time being authorised in

that behalf according to the custom of the service, or Part IV.
according to rules made under section seventy of this Act.

The object of this section is to prevent any legal difficulties arising from the usage of the army relating to the delegation of authority by one officer to another. For example, an officer authorised by the commanding officer to tell off prisoners can exercise the powers of the commanding officer under sect. 46. Again, a report which is directed by this Act to be made to a general officer or to an officer having power to convene or confirm courts-martial may be addressed to the adjutant or other person to whom such reports are usually addressed.

172. (1.) Where any order is authorised by this Act to be made by the Commander-in-Chief or the Adjutant-General, or by the Commander-in-Chief or Adjutant-General of the forces in India or in any presidency in India, or by any general or other officer commanding, such order may be signified by an order, instruction, or letter under the hand of any officer authorised to issue orders on behalf of such commander-in-chief, Adjutant-General, or general or other officer commanding, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorised shall be evidence of his being so authorised. Provisions as to warrants and orders of military authorities.

(2.) The foregoing enactment of this section shall extend to any order or directions issued in pursuance of this Act in relation to a military convict or military prisoner, and any such order or directions shall not be held void by reason of the death or removal from office of the officer signing or ordering the issue of the same, or by reason of any defect in such order or directions, if it be alleged in such order or directions that the convict or prisoner has been convicted, and there is a good and valid conviction to sustain the order or directions.

(3.) An order in any case if issued in the prescribed form shall be valid, but an order deviating from the prescribed form if otherwise valid shall not be rendered invalid by reason only of such deviation.

(4.) Where any military convict or military prisoner is

Part IV. for the time being in custody, whether military or civil, in any place or manner in which he might legally be kept in pursuance of this Act, the custody of such convict or prisoner shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant, or other document, or the authority by or in pursuance whereof such convict or prisoner was brought into or is detained in such custody, and any such order, warrant, or document may be amended accordingly.

(5.) Where a military convict, or a military prisoner, or a person who is subject to military law and charged with an offence, is a prisoner in military custody, and for the purpose of conveyance by sea is delivered on board a ship to the person in command of the ship or to any other person on board the ship acting under the authority of the commander, the order of the military authority which authorises the prisoner to be conveyed by sea shall be a sufficient authority to such person, and to the person for the time being in command of the ship, to keep the said prisoner in custody and convey him in accordance with the order, and the prisoner while so kept shall be deemed to be kept in military custody.

Sub-section (1). The object of this sub-section is similar to that of s. 171. It will allow orders of a general or other officer to be signed by the staff officer or adjutant as authorised by the custom of the service, but the confirmation of courts-martial, and warrants or other documents relating to imprisonment or the infliction of any punishment must be signed by the officer himself.

Sub-sections (2) and (3) are introduced with a view to prevent military proceedings from being rendered void by merely technical objections.

Sub-section (3). *Prescribed.* See Rule 132.

Sub-section (4). This sub-section is introduced for the same object as sub-sections (2) and (3). These sub-sections would probably not meet a case where the order, warrant, or document is issued by a person having no authority to issue it. In such a case it will be advisable to procure a warrant from a Secretary of State under s. 165.

173. If any soldier on furlough is detained by sickness Part IV.
 or other casualty rendering necessary any extension of such furlough in any place, and there is not any officer in the performance of military duty of the rank of captain, or of higher rank, within convenient distance of the place, any justice of the peace who is satisfied of such necessity may grant an extension of furlough for a period not exceeding one month; and the said justice shall by letter immediately certify such extension and the cause thereof to the commanding officer of such soldier if known, and if not, then to a Secretary of State. The soldier may be recalled to duty by his commanding officer or other competent military authority, and the furlough shall not be deemed to be extended after such recall, but, save as aforesaid, the soldier shall not in respect of the period of such extension of furlough be liable to be treated as a deserter or as absent without leave.

Furlough
in case of
sickness.

A soldier who makes a false statement to an officer or justice in respect of extension of his furlough may be tried and punished by court-martial, s. 27 (4).

174. (1.) When a person holds a canteen under the authority of a Secretary of State or the Admiralty, it shall be lawful for any two justices within their respective jurisdictions to grant, transfer, or renew any licence for the time being required to enable such person to obtain or hold any excise licence for the sale of any intoxicating liquor, without regard to the time of year, and without regard to the requirements as to notices, certificates, or otherwise, of any Acts for the time being in force affecting such licences; and excise licences may be granted to such person accordingly.

Licences of
canteens.

(2.) For the purposes of this section the expression licence includes any licence or certificate for the time being required by law to be granted, renewed, or transferred by any justices of the peace, in order to enable any person to obtain or hold any excise licence for the sale of any intoxicating liquor.

Part V.

PART V.

APPLICATION OF MILITARY LAW, SAVING
PROVISIONS, AND DEFINITIONS.*Introductory Observations.*

Application
of Act to
persons as
officers or
soldiers.

Part V of the Act points out the persons who are subject to military law, that is to say, who are liable to be tried and punished by courts-martial for military and in some circumstances for civil offences under the provisions of the Act.

Such persons are of three descriptions: first, the regular forces, that is to say, the British forces, the Indian forces, and the colonial forces: secondly, the auxiliary forces, that is to say, the militia, the yeomanry, and the volunteers: thirdly, persons subject to military law not belonging to either the regular or the auxiliary forces; that is to say, either followers of the regular forces, or persons employed in or with the regular forces when on active service. The regular forces include the Royal Marines when on shore, and the reserve forces when called out.

The sections relating to the liability of persons subject to military law divide them as follows: (i) persons subject to military law as officers (s. 175), and (ii) persons subject to military law as soldiers (s. 176). Sections are then added pointing out the modifications which are necessary with respect to the Royal Marines, the Indian forces, and the auxiliary forces, and with respect to certain members of the regular forces, that is to say, warrant officers and non-commissioned officers, and with respect to the reserve; also with respect to persons who, though subject to military law as above stated, belong neither to the regular nor to the auxiliary forces.

Officers of
regular
forces.

The officers of the land forces (commonly called officers of the regular forces) form of course the principal class of persons subject to military law as officers.

The expression "officer" is defined by s. 190 (4) of the Act to mean an officer commissioned or in pay as an officer in Her Majesty's forces, or any arm, branch, or part thereof; also any person who by virtue of his commission is appointed to any department or corps of any of the said forces; also any person, whether retired or not, who by virtue of his commission, or otherwise, is legally entitled to the style and rank of an officer of any of the said forces.

All officers, as so defined, are not subject to military law. By sect. 175 (1), that law applies to officers of the regular forces on

the active list; but officers of the regular forces who are not on the active list are not *as such* subject to military law, though they become so subject if employed on military service under an officer of the regular forces, or if they are members of the permanent staff of any of the auxiliary forces.

The meaning of "active list" must be ascertained by reference to the Royal Warrant relating to pay. Under the warrant now in force, service on the active list includes full pay service and half pay service, and full pay service includes—

- (a.) Service with a regiment or on the staff;
- (b.) Service while seconded; and
- (c.) Service while on the temporary reserve list of the Engineers.

Under the above warrant "half-pay" applies only to officers who are on temporary half-pay in anticipation of future employment in service on the active list. Officers who have retired from the active list are no longer included under the expression "half-pay officers," and the pay they receive is termed "retired pay."

By s. 190 (4) warrant and other officers holding honorary commissions are declared to be officers within the meaning of the Act, and are consequently amenable to military law as officers.

The expression "regular forces" is defined by s. 190 (8) to include the Royal Marines and Her Majesty's Indian forces, and officers in those forces are therefore subject to military law as above mentioned, but with certain modifications made by the Act in their respective cases, the details of which are mentioned in ss. 179 and 180 and notes thereon. The most important are as follows:—

Officers of
marines and
of Indian
forces.

As regards the Marines, the jurisdiction of the Admiralty over them is not interfered with; and when borne on the books of any ship in commission, they are, speaking generally, subject to the laws governing the Navy.

As regards Her Majesty's Indian forces, *native* officers, soldiers, and followers of Her Majesty's Indian forces are amenable to the Indian Articles of War, though courts-martial for their trial *may* be convened by any officers duly authorised to convene courts-martial under this Act.

Next in importance are the militia officers, who are at all times subject to military law; s. 175 (3).

Officers of
militia.

Yeomanry and volunteer officers, on the other hand, not belonging to the permanent staff, are only subject to military law when in actual command of men who are subject to military law, or when their corps is called out, or when, with their own consent, they are attached to or doing duty with any body of troops (whether regular or auxiliary) subject to military law, or are

Officers of
yeomanry
and volun-
teers.

Part V. ordered on duty by the military authorities, s. 175 (5) (6).
 — The effect of these enactments is shortly, that yeomanry and volunteer officers are subject to military law whenever the men actually under their command are so subject, or their corps is on actual military service; and also whenever they are doing duty, apart from their corps, with any body of troops (whether regular or auxiliary) who are so subject. As to "actual military service," in the case of volunteers, see s. 17 of the Volunteer Act, 1868 (26 & 27 Vict., c. 65).

Other persons subject to military law as officers.

There remain certain persons who, without being commissioned officers of any branch of Her Majesty's service, are nevertheless declared in particular circumstances to become subject to military law as officers, namely:—

(i.) Officers of forces raised out of the United Kingdom and India, and serving under an officer of the regular forces, see s. 175 (4) and note.

(ii.) Officers of strictly colonial forces. See s. 177 and note.

(iii.) Persons who under the orders of a Secretary of State, or of the Governor-General of India, accompany in an official capacity any of Her Majesty's troops on active service in any place beyond the seas; with the qualification that such a person, if a native of India amenable to Indian military law, will be subject to that law. See s. 175 (7) and note.

(iv.) Persons accompanying a force on active service, and holding from the commanding officer of the force passes entitling them to be treated as officers. See s. 175 (8) and note.

Soldiers of the regular forces.

All soldiers of the regular forces are, as a matter of course, subject to military law (s. 176 (1)), including in the expression "soldier" warrant officers not having honorary commissions, and non-commissioned officers, s. 190 (5), (6). There are, however, certain special provisions as to the trial and punishment of warrant officers and non-commissioned officers (ss. 182-183), which must be borne in mind in dealing with the case of any such officer. Here also it must be remembered that the regular forces include, subject to certain modifications, the Royal Marines and Her Majesty's Indian forces.

S. 176 (2), coupled with s. 181 (2), obviates, by an express provision, any doubt that could possibly have been raised as to the application of military law to all non-commissioned officers and men of the permanent staff of the militia, yeomanry, and volunteers.

Colonial forces.

Non-commissioned officers and men of forces raised out of the United Kingdom and India, and under the command of an officer of regulars, are also subject to military law as soldiers. S. 176 (3), and note. As to men of colonial forces, see s. 177, and note.

All pensioners not otherwise subject to military law are made so whenever they are employed in military service under the orders of an officer of the regular forces, and the Act will apply to them as if they were part of the regular forces: ss. 176 (4) and 178, and notes. Part V.
Pensioners.

Besides the regular forces, men of the reserve and auxiliary forces are subject to military law when called out for service. Reserve and auxiliary forces.

This liability arises partly under the Army Act and partly under the Acts relating to the reserve and auxiliary forces respectively. See M.M.L., Chapter IX, para. 91, and M.M.L., Chapter XI.

Men in the Army or Militia Reserve Force when called out are subject to military law under the Army Act (see s. 176 (5)), and Reserve Forces Act, 1882, s. 14.

A Militia Reserve man cannot as such be called out in aid of the civil power, and, except on the occasions above mentioned, is not, except so far as he may be a militiaman, subject to military law. An Army Reserve man, on the other hand, is in a modified way at all times subject to military law, inasmuch as he is liable to be tried by a court-martial for the offences mentioned in s. 6 of the Reserve Forces Act, 1882, which relates to failure to attend at any place when required, insubordinate behaviour to superior officers, and to compliance with the regulations for the payment or government of the force. Army and Militia Reserve.

A militiaman as above mentioned (see M.M.L., Chapter XI, para. 46), is liable to a preliminary training; and every part of the militia is liable to be called out for an annual training or to be embodied for actual service. When the corps or other body to which a non-commissioned officer or man belongs is called out for training, or embodied, that non-commissioned officer or man is subject to military law. The individual militia man is also subject to military law during his preliminary training, or when he is undergoing any other training with a portion of the regular forces or otherwise, or when he is attached to or otherwise acting as part of the regular forces. See s. 176 (6) (which superseded ss. 56 and 57 of the Militia (Voluntary Enlistment) Act, 1875, now repealed), and Militia Act, 1882, ss. 23-27. Militiamen.

As to the liability of a member of the yeomanry to be called out, and the power of yeomanry to assemble voluntarily, see M.M.L., Chapter XI, para. 59.

If a corps of yeomanry is called out on actual military service or is being trained or exercised, whether it has been called out or assembled voluntarily, and whether it is serving alone or with any portion of the regular forces or of the militia when subject to military law, every member of that corps is subject to military law. Individual members of a corps of yeomanry are also subject to military law when they are attached to or acting with any Yeomanry.

Part V. regular forces or when they are serving in aid of the civil power; s. 176 (7); 44 Geo. 3, c. 54, ss. 22, 23. So far as the Yeomanry Acts are not covered by the terms of the Army Act, s. 176, the Yeomanry may be subject to military law under the circumstances mentioned in their own Acts, as a reference in those Acts to the Mutiny Act must by virtue of the provisions of the Army Discipline and Regulation (Commencement) Act, 1879, be construed to refer to the Army Act, 1881. See s. 5 of the Act of 1879; and Army Act, s. 191 (3).

Volunteers. When a volunteer corps is called out into actual military service (see M.M.L., Chapter XI, para. 65), every member of that corps is subject to military law. Individual members of the volunteer corps are also subject to military law when they are being trained or exercised with or are attached to or acting with any regular force, or when they are being trained or exercised with any portion of the militia when subject to military law.

It is the duty of the commanding officer of a volunteer force, except when the corps is called out, to provide for members of the corps before entering on any service in which they will become subject to military law, being informed that they will be so subject, and having an opportunity of withdrawing from that service; but the absence of such notice will not exempt the volunteer. See s. 176 (8), which has superseded s. 23 of the Volunteer Act, 1863 (26 and 27 Vict., c. 65), now repealed.

When a volunteer is subjected to military law, he may be punished by dismissal, in the event of his committing any offence triable by a court-martial or by a commanding officer; s. 181 (6).

General provisions respecting application of military law to auxiliary forces.

In the case of the auxiliary forces the distinction between the case of the corps being subject to military law and of individual members being subject to military law is important. In the former case every member of the corps, whether present with the corps or not, is subject to military law, and if absent improperly can be dealt with as a deserter or absentee without leave (see Militia Act, 1882, ss. 23, 24, as to militiamen). Wherever the individual members only are subject, absent members are exempt. The reason is obvious, especially in the case of the volunteers. If the corps is called out for actual service under proclamation, anyone who does not attend is a deserter. If, on the other hand, a volunteer corps goes out for a field day with a portion of the regular forces, it is optional with the members of that corps whether they do or do not attend, but if they attend they must be subject to the same rules and discipline as the forces with which they are serving, and must therefore be subject to military law.

Persons not belonging to Her

Lastly. When troops are on active service abroad it is absolutely necessary for the sake of military operations and discipline,

that civilians who accompany them should be under the control of military officers and tribunals. Part V.

Civilians who accompany troops in an official capacity or who have obtained the privilege of a pass from the commanding officer of the force will, as already noticed, be subject to military law as officers. All other civilians, commonly known as followers, who accompany the troops either as suttlers or on other business connected with the forces, or for purposes of business not necessary to the forces, or of pleasure or otherwise, will be subject to military law as soldiers. Majesty's forces, but subject to military law as soldiers.

The only modification in the application of the Act to persons who do not belong to Her Majesty's forces which requires notice here, is that such a person cannot be punished by a commanding officer and cannot be tried by regimental court-martial.

As to the trial and punishment of a person who or whose corps has ceased to be subject to military law since the commission of the offence, see s. 158 and note.

Persons subject to Military Law.

175. The persons in this section mentioned are persons subject to military law as officers, and this Act shall apply accordingly to all the persons so specified; that is to say, Persons subject to military law as officers.

- (1.) Officers of the regular forces on the active list, within the meaning of any Royal Warrant for regulating the pay and promotion of the regular forces, and officers not on such active list who are employed on military service under the orders of an officer of the regular forces who is subject to military law :
- (2.) Officers who are members of the permanent staffs of any of the auxiliary forces, and are not otherwise subject to military law :
- (3.) Officers of the militia other than members of the permanent staff :
- (4.) All such persons not otherwise subject to military law as may be serving in the position of officers of any troops or portion of troops raised by order of Her Majesty beyond the limits of the United

Part V.

Kingdom and of India, and serving under the command of an officer of the regular forces :

Provided that nothing in this Act shall affect the application to such persons of any Act passed by the legislature of a colony :

- (5.) Officers of the yeomanry, and officers of the volunteers, whenever in actual command of men who are in pursuance of this Act, subject to military law, or when their corps is on actual military service :
- (6.) Any officer of the yeomanry or volunteers, whether in receipt of pay or otherwise, during and in respect of the time when with his own consent he is attached to or doing duty with any body of troops for the time being subject to military law, whether of the regular or auxiliary forces, or, with his own consent, is ordered on duty by the military authorities :
- (7.) Every person not otherwise subject to military law who under the general or special orders of a Secretary of State or of the Governor-General of India accompanies in an official capacity equivalent to that of officer any of Her Majesty's troops on active service in any place beyond the seas, subject to this qualification, that where such person is a native of India, he shall be subject to Indian military law as an officer :
- (8.) Any person, not otherwise subject to military law, accompanying a force on active service who shall hold from the commanding officer of such force a pass revocable at the pleasure of such commanding officer entitling such person to be treated on the footing of an officer,

Sub-section (4.) This is not meant to include strictly colonial forces, but only forces raised at the Imperial expense. It will include officers of the Malta Fencibles. See s. 176 (3). As to strictly colonial forces, see s. 177.

Sub-section (5). It will be observed that officers of the yeomanry and volunteers are not subject to military law, except when the men under their command are subject to military law; see s. 176 (7) and (8), or when their corps is on actual military service. Consequently, an officer of volunteers who is not present at a field day at which the volunteers are brigaded with regular troops is not subject to military law, though if he were present with his corps he would be so subject. Such an officer may also be subject to military law under the Acts relating to the yeomanry and volunteers. (See as to yeomanry, 44 Geo. 3, c. 54, ss. 22, 23; as to volunteers, 26 and 27 Vict. c. 65, s. 17, and A.D. and R. (Commencement) Act, 1879, s. 5.)

Sub-sections (7) and (8). These sub-sections make certain persons subject to military law as officers, who would otherwise be subject under s. 176 (10) to trial and punishment as soldiers. The first extends to persons attached to a military expedition by order of the Secretary of State or the Governor-General of India in a diplomatic, scientific, or other official capacity. The second would apply to persons like contractors or newspaper correspondents, who obtain passes from the commanding officer of the force directing them to be treated as officers. It will be observed that an official of the Governor-General, who is a native of India, will be subject to Indian military law. See s. 180 (2).

176. The persons in this section mentioned are persons subject to military law as soldiers, and this Act shall apply accordingly to all the persons so specified; that is to say,

Persons
subject to
military law
as soldiers.

- (1.) All soldiers of the regular forces :
- (2.) All non-commissioned officers and men of the permanent staff of any of the auxiliary forces who are not otherwise subject to military law :
- (3.) All non-commissioned officers and men serving in a force raised by order of Her Majesty beyond the limits of the United Kingdom and of India, and serving under the command of an officer of the regular forces :

Provided that nothing in this Act shall affect the application to such non-commissioned officers and men of any Act passed by the legislature of a colony.

- Part V.**
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- (4.) All pensioners not otherwise subject to military law who are employed in military service under the orders of an officer of the regular forces :
- (5.) All non-commissioned officers and men belonging to the army reserve force or the militia reserve force,—
- (a.) When called out for training and exercise ; and
 - (b.) When called out for duty in aid of the civil power ; and
 - (c.) When called out on permanent service under Her Majesty's proclamation :
- (6.) All non-commissioned officers and men in the militia of the United Kingdom,—
- (a.) During their preliminary training ; and
 - (b.) When they or the body of militia to which they belong are being trained or exercised either alone or with any portion of the regular forces or otherwise ; and
 - (c.) When attached to or otherwise acting as part of or with any regular forces ; and
 - (d.) When embodied :
- (7.) All non-commissioned officers and men belonging to the yeomanry force of the United Kingdom,—
- (a.) When they or their corps are being trained or exercised, either alone or with any portion of regular forces or with any portion of the militia when subject to military law ; and
 - (b.) When they are attached to or otherwise acting as part of or with any regular forces ; and

- (c.) When their corps is on actual military service ; and Part V.
- (d.) When serving in aid of the civil power :
- (8. All non-commissioned officers and men belonging to the volunteer forces of the United Kingdom,—
- (a.) When they are being trained or exercised with any portion of the regular forces or with any portion of the militia when subject to military law ; and
- (b.) When they are attached to or otherwise acting as part of or with any regular forces ; and
- (c.) When their corps is on actual military service :

Provided that it shall be the duty of the commanding officer of any part of the volunteer force not in actual military service, when he knows that any non-commissioned officers or men belonging to that force are about to enter upon any service which will render them subject to military law, to provide for their being informed that they will become so subject, and for their having an opportunity of abstaining from entering on that service.

- (9.) All persons who are employed by or who are in the service of any of Her Majesty's troops when employed on active service beyond the seas, and who are not under the former provisions of this Act subject to military law :
- (10.) All persons not otherwise subject to military law who are followers of or accompany Her Majesty's troops, or any portion thereof, when employed on active service beyond the seas ; subject to this qualification that where any such persons are employed by or are followers of or accompany any portion of Her Majesty's forces consisting partly of Her Majesty's Indian forces subject to

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Indian military law, and such persons are natives of India, they shall be subject to Indian military law.

Sub-section (2). See s. 181 (2).

Otherwise subject, &c. Soldiers posted to the volunteer permanent staff in their territorial regiment would be "otherwise," i.e., as being in the regular forces, subject to military law.

Sub-section (3). This is not intended to include strictly colonial forces, but only forces raised at the Imperial expense. For example, it will include the West Indian regiments, the Malta Fencibles, and the Lascars of Hong Kong and Ceylon, whose maintenance is voted annually by Parliament. It might, however, no doubt extend to a force raised under a Colonial Act, but under the Imperial control. But strictly colonial forces are dealt with by s. 177.

Sub-section (4). See s. 178. Some pensioners are on the permanent staff of the auxiliary forces. Those who are not from that or from any other cause subject to military law, will only be so subject if they are actually employed in military service under the orders of an officer of the regular forces. A pensioner employed as canteen steward, though wearing no uniform and performing no military duty, has been held to be subject to military law under this sub-section. *Re Flint*, L.R. 15 Q.B.D., 488.

Sub-section (5). As to the power to try by court-martial an Army Reserve man who on two consecutive occasions fails to comply with the regulations respecting pay, or fails to attend at an appointed place, or is insubordinate to a superior officer, or obtains pay by any fraudulent means, or fails to comply with the regulations for the government of the forces, see s. 6 of the Reserve Forces Act, 1882.

Sub-section (6). The local militia, if they were to be raised (see M.M.L., Chapter IX, paras. 108, 105), would be also subject to military law under the Acts relating to them, and the A. D. and R. (Commencement) Act, 1879, s. 5. As regards the application of the Act to these forces, see ss. 178, 181.

Sub-section (7). As to the provisions of the Yeomanry Acts, making the yeomanry subject to military law, see introductory observations to this part of the Act. As to the application of the Act to the yeomanry, see ss. 178, 181.

Sub-section (8). As to the application of the Act to volunteers, see ss. 178, 181, and introductory observations to this part of the Act. As to "actual military service," see 26 & 27 Vict., c. 65, s. 17.

Informed. This information must be given on each occasion of entering on service, but it may be given by an insertion in the

notice for the corps to parade that a person who attends will become subject to military law, and that he is at liberty not to attend.

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Sub-sections (9) and (10). See introductory observations to this part of the Act.

177. Where any force of volunteers, or of militia, or any other force, is raised in India or in a colony, any law of India or the colony may extend to the officers, non-commissioned officers and men belonging to such force, whether within or without the limits of India or the colony; and where any such force is serving with part of Her Majesty's regular forces, then so far as the law of India or the colony has not provided for the government and discipline of such force, this Act and any other Act for the time being amending the same shall, subject to such exceptions and modifications as may be specified in the general orders of the general officer commanding Her Majesty's forces with which such force is serving, apply to the officers, non-commissioned officers, and men of such force, in like manner as they apply to the officers, non-commissioned officers and men respectively mentioned in the two preceding sections of this Act.

Persons belonging to colonial forces and subject to military law as officers or soldiers.

For definitions of "India" and "colony," see s. 190 (21) (23).

This section applies to what may be termed strictly colonial forces, that is to say, forces raised on the responsibility of the government of the colony.

So long as such forces are within the colony their discipline can be provided for by the law of the colony. This section removes any doubts as to whether that law would apply to such forces when outside the limits of the colony.

In order to prevent difficulties arising from deficiencies of the colonial law in cases where the colonial forces are serving with the regular forces, the section provides that such deficiencies may be remedied by the application of the Army Act, subject to modification made by general orders of the general officer commanding the regular forces in question.

178. When officers, non-commissioned officers, and men belonging to the auxiliary forces, or any pensioners, are
(A.M.L.)

Mutual relations of regular

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forces and
auxiliary
forces.

subject to military law in pursuance of this Act, such officers, non-commissioned officers, men and pensioners shall be subject to this Act in all respects as if they were part of the regular forces, and the provisions of this Act shall be construed as if such officers, non-commissioned officers, men, and pensioners were included in the expression "regular forces": Provided that nothing in this section contained shall affect the conditions of service of any officer, non-commissioned officer, or man belonging to such auxiliary forces, or of any pensioner.

The effect of this section combined with s. 50 (1) and with the repeal of the provisions of the Militia and Volunteer Acts by which members of those corps are to be tried by their own officers, is to enable regular officers, militia officers, and also, when subject to military law, yeomanry and volunteer officers, to sit indiscriminately on courts-martial for the trial of members of the regular forces and members of the auxiliary forces. Rule 20 (B), however, provides that the militia and volunteers respectively are, if practicable, to be represented on any court-martial trying a militiaman or volunteer. As to removal of doubts respecting command, see s. 71.

It will be recollected that under s. 158 a militiaman or volunteer who has ceased to be subject to military law can, within three months afterwards, be tried by court-martial for an offence committed while he was so subject.

Modification
of Act with
respect to
Royal
Marines.

179. In the application of this Act to Her Majesty's Royal Marines, the following modifications shall be made :

- (1.) Nothing in this Act shall prejudice any power of the Admiralty to make Articles of War for the Royal Marines or otherwise prejudice the authority of the Admiralty over the Royal Marines or confer on any officers who are not officers of the Royal Marines any greater authority to command the Royal Marines than they have heretofore used ; and a general court-martial for the trial of an officer or man in the Royal Marines shall not be convened except by an officer authorised by a

warrant from the Admiralty in pursuance of this section, and except that where such officer or man while subject to this Act is serving beyond the seas with any other portion of the regular forces, and in the opinion of the general or other officer commanding those forces (such opinion to be stated in the order convening the court and to be conclusive) there is not present any officer authorised by warrant from the Admiralty to convene a general court-martial, a general court-martial convened by such general or other officer, if authorised to convene general courts-martial, may try such officer or man.

- (2.) A district court-martial for the trial of a man in the Royal Marines may be convened by any officer having authority to convene a district court-martial for the trial of any soldier of any other portion of the regular forces.
- (3.) Any power in relation to the convening of courts-martial, or of authorising an officer to convene courts-martial, or to delegate the powers of convening courts-martial, or of confirming the findings and sentences of courts-martial, or otherwise in relation to courts-martial, which under this Act Her Majesty may exercise by any warrant or warrants, may be exercised in Her Majesty's name by a warrant or warrants from the Admiralty ; and any such warrant may be addressed to any officer to whom any warrant of Her Majesty can be addressed.
- (4.) Any power vested by this Act in Her Majesty in relation to the confirmation of the findings and sentences of court-martial, or otherwise in relation to courts-martial, may be exercised by the Admiralty.
- (5.) Without prejudice to any power of confirmation

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the findings and sentences of any general or district court-martial on an officer or man of the Royal Marines may be confirmed by an officer authorised under this section to convene the same, or by any officer otherwise authorised under this Act to confirm the findings and sentences of general or district courts-martial, as the case may be, for the trial of any soldier of any other portion of the regular forces.

- (6.) Any power vested in Her Majesty by this Act in relation to the making of rules, or to any order with respect to pay, or to any complaint in respect of an officer who thinks himself wronged, shall be vested in and exercised by the Admiralty, and the provisions of this Act respectively relating to such rules, orders, and complaints shall be construed, so far as respects the Royal Marines, as if the "Admiralty" were substituted for Her Majesty, as well as for the Secretary of State.
- (7.) Anything required or authorised by this Act to be done by, to, or before a Secretary of State, the Commander-in-Chief, Adjutant-General, or Judge Advocate-General may, as regards the Royal Marines, be done by, to, or before the Admiralty ; and the provisions of this Act shall be construed, so far as respects the Royal Marines, as if "the Admiralty" were substituted for "Secretary of State," "Commander-in-Chief," "Adjutant-General," and "Judge Advocate-General," wherever those words occur.
- (8.) Anything required or authorised by this Act to be done by, to, or before the Commander-in-Chief of the forces in India, or of any presidency in India, or the general or other officer commanding the forces in any colony or elsewhere may, as regards the Royal Marines, be done by

to, or before such officer as the Admiralty may by warrant from time to time appoint in that behalf, and if no such appointment is made, by such Commander-in-Chief or general or other officer. Part V.

- (9.) Anything authorised by this Act to be done by Royal Warrant may be done, as regards the Royal Marines, by warrant of the Admiralty; and the provisions of this Act with respect to Royal Warrants printed by the Government printer shall apply to any warrants of the Admiralty under this Act.
- (10.) Anything authorised to be done by the deputy of the Judge Advocate-General may be done by any one of the Commissioners for executing the office of Lord High Admiral, or by a secretary of the Admiralty.
- (11.) In the provisions of this Act with respect to evidence, the expression "Queen's Regulations" shall be deemed to include Admiralty Regulations.
- (12.) Nothing in the provisions of this Act relating to the term of enlistment, to the conditions of service, to appointment or transfer, to transfer to the reserve, to the re-engagement or prolongation of service, or to forfeiture of service of a soldier of the regular forces, or to the rules for reckoning service for discharge or transfer to the reserve, shall apply to the Royal Marines. Save that if regulations made by a Secretary of State and the Admiralty provide for the transfer of men of the Royal Marines to any other part of Her Majesty's regular forces, a man of the Royal Marines may, with his consent, be so transferred in accordance with the said regulations, and, subject to those regulations, shall become a soldier of the said part of Her Majesty's regular

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forces in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of this Act. And save that if any regulations so made provide for the transfer to the Royal Marines of men belonging to any other part of Her Majesty's regular forces, a man belonging to such part may, with his consent, be so transferred in accordance with the said regulations, and, subject to those regulations, shall become a man of the Royal Marines in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of the Acts relating to the Royal Marines.

- (13.) A marine on his re-engagement shall make a declaration either before a justice of the peace or person having under this Act the same authority as a justice of the peace for the purposes of enlistment, or before a naval officer commanding any ship commissioned by Her Majesty, or before the commanding officer of any battalion or detachment of Royal Marines in the form from time to time directed by the Admiralty.
- (14.) A man in the Royal Marines shall forfeit his service for fraudulent enlistment and absence without leave in like manner as he forfeits it for desertion under the Acts relating to the Royal Marines.
- (15.) Officers and men of the Royal Marines, during the time that they are borne on the books of any ship commissioned by Her Majesty (otherwise than for service on shore), shall be subject to the Naval Discipline Act, and to the laws for the government of officers and seamen in the Royal Navy, and to the rules for the discipline of the Royal Navy for the time being, and shall be tried

and punished for any offence in the same manner as officers and seamen in the Royal Navy: Part V¹
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Provided that—

(a.) The last-mentioned provision shall not prevent the application of this Act to any person dealing with or having any relations with any such officer or man of the Royal Marines, or to any such officer or man if found on shore as a deserter or absentee without leave; and

(b.) If any such officers or men of the Royal Marines are employed on land, the senior naval officer present may, if it seems to him expedient, order that they shall, during such employment, be subject to military law under this Act, and while such order is in force they shall be subject to military law under this Act accordingly.

- 16.) If any officer or man of the Royal Marines who is borne on the books of any ship commissioned by Her Majesty commits an offence for which he is not amenable to a naval court-martial, but for which he can be punished under this Act, he may be tried and punished for such offence under this Act.
- (17.) The Admiralty may direct that an officer or man of the Royal Marines may be tried under this Act for any offence committed by him on shore, whether he be or be not amenable to a naval court-martial for such offence, or be or be not borne on the books of any ship commissioned by Her Majesty.
- (18.) Where any officer or man of the Royal Marines is on board any ship commissioned by Her Majesty, but is borne on the books thereof for service on shore, he shall be subject to the Naval Discipline Act to such an extent and under such regula-

29 & 30 V1 c. 109.

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tions as Her Majesty by Order in Council from time to time directs, and so far as she does not so direct as is for the time being directed by Order in Council with respect to the other regular forces.

- (19.) Any naval prison within the meaning of the Naval Discipline Act shall be deemed to be included in the definition of a public prison for the purposes of this Act, and the Admiralty shall not have any authority to establish any military prison under this Act.
- (20.) In this section the expression "Admiralty" means the Lord High Admiral or the Commissioners for executing the office of the Lord High Admiral for the time being or any two of them.
- (21.) The expression "man of the Royal Marines" includes a non-commissioned officer of the Royal Marines.

As the Admiralty by commission from the Crown exercise the powers of the Crown in relation to the navy, the powers which by this Act are vested in Her Majesty in relation to the army are by this section given to the Admiralty.

Sub-section (1). This sub-section prevents an officer of the army from convening a general court-martial for the trial of an officer or man in the marines except under the circumstances here mentioned. The confirmation is provided for by sub-sections (4) and (5).

Sub-sections (3)—(5). These confer on the Admiralty the power of confirming the findings and sentences of general courts-martial, and of conferring by warrant on officers the power to confirm the findings and sentences of both general and district courts-martial.

Sub-section (5) provides that in the absence of any such confirmation by the Admiralty or by an officer holding a warrant from the Admiralty, the finding and sentence of a general or district court-martial on a marine may be confirmed by an officer holding a warrant which enables him to confirm the findings and sentences of general or district courts-martial, as the case may be, on soldiers of other portions of the regular forces.

Sub-section (12). The formalities in the enlistment of the marines will be those contained in Part II of this Act, but the

term of enlistment, the conditions of service, transfer, and forfeiture of service, will remain under the Acts relating to the marines, 10 & 11 Vict. c. 68; 20 Vict. c. 1.

Sub-section (15). *Proviso (a).* This proviso refers to s. 156.

Proviso (b). *Employed on land.* This refers to employment for a length of time amounting to an expedition, and does not refer to the mere landing of marines for a temporary purpose.

Sub-section (17). *Offence.* This means an offence punishable under this Act.

180. (1.) In the application of this Act to Her Majesty's forces when serving in India the following modifications shall be made:—

Modification
of Act with
respect to
Her
Majesty's
Indian
forces.

A court-martial may take the same proceedings for the punishment of a person not subject to military law who, in any part of India, commits any offence as a witness before a court-martial, or is guilty of a contempt of a court-martial, as might be taken by any civil court in that part of India in the case of the like offence in that court, and any court in which such proceedings are taken shall have jurisdiction to punish such person accordingly.

(2.) In the application of this Act to Her Majesty's Indian forces, the following modifications shall be made:—

(a.) Nothing in this Act shall prejudice or affect the Indian military law respecting officers or soldiers or followers in Her Majesty's Indian forces, being natives of India; and on the trial of all offences committed by any such native officer, soldier, or follower, reference shall be had to the Indian military law for such native officers, soldiers, or followers, and to the established usages of the service, but courts-martial for such trials may be convened in pursuance of this Act.

(b.) For the purposes of this Act the expression "Indian military law" means the Articles of

Part V.

War or other matters made, enacted, or in force, or which may hereafter be made, enacted, or in force under the authority of the Government of India; and such articles or other matters shall extend to such native officers, soldiers, and followers wherever they are serving.

(c.) The Governor of any presidency in India may suspend the proceedings of any court-martial held in India on an officer or soldier belonging to Her Majesty's Indian forces within such presidency.

(d.) An officer belonging to Her Majesty's Indian forces who thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, may complain to the Commander-in-Chief in the presidency to which such officer belongs, who shall cause his complaint to be inquired into, and thereupon report to the Governor of such presidency in order to receive the further directions of that Governor.

(e.) A court-martial may sentence an officer of the Indian staff corps to forfeit all or any part of his army or staff service, or all or any part of both.

(f.) The Governor of any of the presidencies in India may reduce any warrant officer not holding an honorary commission who is serving in or belonging to such presidency to a lower grade of warrant rank, or may remand any such warrant officer to regimental duty in the regimental rank held by him immediately previous to his appointment to be a warrant officer.

(g.) The provisions of this Act relating to

warrant officers not holding honorary commissions shall apply to hospital apprentices in India although not appointed by warrant.

(h.) Part Two of this Act shall not apply to Her Majesty's Indian forces, but persons may be enlisted and attested in India for medical service or for other special service in Her Majesty's Indian forces for such periods, by such persons, and in such manner as may be from time to time authorised by the Governor-General of India.

(3.) In this Act, so far as regards India, any reference to an indictable offence, or an offence punishable on indictment, shall be deemed to refer to an offence punishable with rigorous imprisonment.

Sub-section (1). As an Indian court has not the power which an English court has to punish contempt committed before itself, this sub-section was enacted to adapt to Indian law the power conferred by s. 126 of procuring the punishment of a civilian guilty of contempt of a court-martial.

Sub-section (2). *Natives of India*, see definition in s. 190 (22).

Natives of India are subject to the Indian Articles of War, and the Acts made by the Government of India; but a court-martial on such natives, although it must accord in every respect with a court convened under the Indian military law, may under this sub-section be convened by an officer authorised to convene a court-martial under this Act. On the other hand, Europeans in the Indian forces are subject to the laws and regulations for the government of the British army. Half-castes and persons born in India, but of certain degrees of European descent, specified in the Indian Articles of War, are for the purposes of this Act, Europeans.

It will be observed that the Indian Articles of War are by this sub-section expressly extended to the natives of India belonging to the Indian forces in whatever part of the world they are serving.

Sub-section (2) (d). See s. 42 and note.

Sub-section (2) (h). Under 23 & 24 Vict. c. 100, it is illegal to enlist European forces for service in India only. This sub-section permits Europeans to be enlisted for medical or other special service in manner from time to time provided by the Governor-General.

Part V. It will be recollected that under s. 190 (21), "India" includes the territories in India under the dominion of any native prince or princes, as well as the territories the government of which is vested in Her Majesty.

Modification
of Act with
respect to
auxiliary
forces.

181. (1.) The provisions of this Act with respect to enlistment shall not apply to a person enlisted or enrolled in any of Her Majesty's auxiliary forces, except so far as such person enlists or attempts to enlist in the regular forces, and except so far as the said provisions may be applied by any other Act.

(2.) The provisions of this Act shall apply to the permanent staff of the auxiliary forces who are not otherwise part of the regular forces, in like manner as if such permanent staff were part of the regular forces.

(3.) The provisions of this Act with respect to billeting and impressment of carriages shall apply to Her Majesty's auxiliary forces when subject to military law, in like manner as if they were part of the regular forces, subject to the following modification :

(4.) An order issued and signed as a route or an order signed by the officer commanding the battalion of militia, or the battalion or corps of yeomanry or volunteers, shall be substituted for a route—

- (a.) In the case of any militiaman attending for his preliminary training ; and
- (b.) In the case of any militia officer, non-commissioned officer, or man, assembled for training and exercise at the place in the United Kingdom appointed by Her Majesty in that behalf ; and
- (c.) In the case of any militia officer, non-commissioned officer, or man, embodied under an order of Her Majesty, who has joined his corps at the place appointed for his assembling ; and
- (d.) In the case of any officer, non-commissioned officer or man of the yeomanry or volunteers

attending at the place at which his corps is Part V.
required to assemble ;

and an order to billet such officer, non-commissioned officer, or man, purporting to be signed in manner required by this Act in the case of a route or by the officer commanding a battalion of militia, or a battalion or corps of yeomanry or volunteers, as the case may be, shall be evidence, until the contrary is proved, of the order being issued in accordance with this Act, and when delivered to an officer, non-commissioned officer, or man of the militia, yeomanry, or volunteers, shall be a sufficient authority to such officer, non-commissioned officer, or man, to demand billets, and when produced by an officer, non-commissioned officer, or man to a constable shall be conclusive evidence to such constable of the authority of the officer, non-commissioned officer, or man producing the same to demand billets in accordance with the order.

(5.) The competence or liability of an officer of the auxiliary forces to be nominated or elected to, or to hold the office of sheriff, mayor, or alderman, or an office in a municipal corporation, shall not be affected by reason of the battalion or corps to which he belongs being assembled for annual training, at the time of such nomination or election, or during the time of his tenure of office.

(6.) When a member of the volunteers, being a non-commissioned officer or private, is subject to military law, dismissal may be awarded to him as a punishment, in the event of his committing any offence triable by court-martial or punishable by a commanding officer under this Act.

Sub-section (1). *Except so far as such person enlists.* For the offence of fraudulent enlistment, see s. 13.

Except so far as the said provisions. This refers to the application of the procedure for enlistment to the enlistment of militiamen by the Militia Act 1882 (45 & 46 Vict. c. 49, s. 9).

Sub-section (8). *Billeting and impresment of carriages.* See Part III of the Act.

Sub-section (5). If a sheriff is an officer of the militia at the time when his corps is embodied, he is discharged from personally

Part V. — performing the office of sheriff, and the under sheriff is to perform the duty (Militia Act, 1882, s. 40).

The seat of a member of Parliament is not vacated by the acceptance of a commission in the auxiliary forces; and a person in the militia is not liable to any punishment for absence during the time he is going to vote at any election of a member to serve in Parliament, or during the time he is returning from such election. A person in the militia cannot be compelled to serve as a constable or other peace officer, or as a parish officer (Militia Act, 1882, ss. 38–41).

Special provisions as to warrant officers.

182. The provisions of this Act shall apply to a warrant officer not holding an honorary commission in like manner as if he were a non-commissioned officer, subject nevertheless (in addition to the modifications for a non-commissioned officer) to the following modifications :

- (1.) He shall not be punished by his commanding officer nor tried by regimental court-martial, nor sentenced by a district court-martial to any punishment not in this section mentioned ; and
- (2.) Without taking away any power of a court-martial, other than a district court-martial, he may be sentenced by any court-martial having power to try him, to such forfeitures, fines, and stoppages as are allowed by this Act, either in addition to or without any other punishment, and also to be dismissed from the service, or to be suspended from rank, and pay, and allowances, for any period stated by the court-martial, or to be reduced to the bottom or any other place in the list of the rank which he holds, or to be reduced to an inferior class of warrant officer (if any), or if he was originally enlisted as a soldier and transferred to serve as a warrant officer, but not otherwise, to be reduced to a lower grade, or to the ranks ;
- (3.) A warrant officer reduced to the ranks, or remanded to regimental duty in the rank of private, shall not be required to serve in the ranks as a soldier ;

- (4.) The president of a court-martial for the trial of a warrant officer shall in no case be under the rank of captain. Part —

Not holding an honorary commission. Warrant officers holding honorary commissions, are officers within the meaning of the Act; s. 190 (4), (5). This section makes the Act apply to warrant officers who do not hold such commission as if they were non-commissioned officers. Consequently, subject to the modifications in this and the next section, the word "soldier" throughout the Act includes a warrant officer not holding an honorary commission. See s. 190 (6). In this and the next section, the commanding officer is the commanding officer as defined by Rule 128. See Q. R., 1885, Sect. VI, para. 12.

Sub-section (2). *Without taking away.* This refers to courts having larger powers than district courts-martial, which can use their other powers of sentence against a warrant officer.

183. In the application of this Act to a non-commissioned officer, the following modifications shall apply :

Special provisions as to non-commissioned officer.

- (1.) The obligation on a commanding officer to deal summarily with a soldier charged with drunkenness shall not apply to a non-commissioned officer charged with drunkenness :
- (2.) The Commander-in-Chief, and in India the Commander-in-Chief of the forces in India, and also the Commander-in-Chief of the forces in any presidency in India, may reduce any non-commissioned officer to any lower grade or to the ranks :
- (3.) A non-commissioned officer may be reduced by the sentence of a court-martial to any lower grade or to the ranks, either in addition to or without any other punishment, in respect of an offence :
- (4.) A non-commissioned officer sentenced by court-martial to penal servitude or imprisonment shall be deemed to be reduced to the ranks :

Provided that—

- (a.) An army schoolmaster shall not be liable to be reduced to the ranks, but may nevertheless be sentenced by a court-martial to penal servitude

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Part V.

or imprisonment, or to a lower grade of pay, or to be dismissed, and if sentenced to penal servitude or imprisonment, shall be deemed to be dismissed ; but

- (b.) The Commander-in-Chief, and in India the Commander-in-Chief of the forces in India, and also the Commander-in-Chief of the forces of any presidency in India, may dismiss any army schoolmaster :
- (c.) A soldier being an acting non-commissioned officer by virtue of his employment either in a superior rank or in an appointment may be ordered by his commanding officer either for an offence or otherwise to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the ranks, to the ranks.

Non-commissioned officer. See definition in s. 190 (5), which includes acting non-commissioned officer.

Sub-section (1). *Obligation.* See s. 46 (3).

Sub-sections (2), (3), and proviso (c). A non-commissioned officer can only be reduced by the Commander-in-Chief or by sentence of a court-martial; but inasmuch as the word "non-commissioned officer" includes acting non-commissioned officer (see s. 190 (5)), it is provided by proviso (c) that a soldier having acting rank only may be reduced to his permanent rank by his commanding officer whether for an offence or for any other cause.

Sub-section (3) must be read in conjunction with the Queen's Regulations, 1885, Sect. VII, para. 112, *et seq.*, defining what are ranks. Acting rank is a matter to be entirely dealt with by the commanding officer, and not being legally a rank under the Queen's Regulations is not cognizable in the sentence of a court-martial. Therefore a sentence of reduction from or to acting rank, *e.g.*, from or to the rank of lance-serjeant or lance-corporal, is inoperative. But a lance-corporal, being a non-commissioned officer, loses his acting rank under sub-section (4) upon being sentenced to imprisonment.

Sub-section (4). Although under this sub-section a non-commissioned officer sentenced to penal servitude or imprisonment is *ipso facto* reduced to the ranks, it is desirable to specify such reduction in the sentence,

Proviso (a). This proviso allows a schoolmaster to be sentenced to penal servitude, or imprisonment, although he cannot be reduced to the ranks. It does not of course prevent the infliction of any less punishment than imprisonment.

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184. In the application of this Act to persons who do not belong to Her Majesty's forces, the following modifications shall be made :

Special provisions as to application of Act to persons not belonging to Her Majesty's forces.

(1.) Where an offence has been committed by any person subject to military law who does not belong to Her Majesty's forces, such person may be tried by any description of court-martial other than a regimental court-martial, convened by an officer authorised to convene such description of court-martial, within the limits of whose command the offender may for the time being be, and may be tried and, on conviction, dealt with and punished accordingly.

(2.) Any person subject to military law who does not belong to Her Majesty's forces shall, for the purposes of this Act relating to offences, be deemed to be under the command of the commanding officer of the corps, or portion of a corps (if any), to which he is attached, and if he is not attached to any corps, or portion of a corps, under the command of any officer who may for the time being be named his commanding officer by the general or other officer commanding the force with which such person may for the time being be, or of any other prescribed officer, or if no such officer is named or prescribed, under the command of the said general or other officer commanding, but such person shall not be liable to be punished by a commanding officer or by a regimental court-martial.

Provided that a general or other officer commanding shall not place a person under the command of an officer of rank inferior to the official rank of such person if there is present at the place where such person is any officer of higher rank under whose command he can be placed.

This section provides for the trial by court-martial of a person (A.M.L.)

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Part V. who does not belong to either the regular forces or the auxiliary forces.

Sub-section (2). This sub-section has reference to certain offences, see ss. 7 (4), 14 (2), 15 (3), and also to the investigation by the commanding officer, see ss. 45 and 46; see also s. 49 (field general court-martial), and Rule 128.

Saving Provisions.

Special provisions as to prisoners and prisons in Ireland.

185. All jurisdiction and powers of a Secretary of State under this Act with respect to military convicts or military prisoners, or to prisons other than military prisons, shall in Ireland be vested in the General Prisons Board, and shall be exercised by that Board in the manner and subject to the regulations in and under which the jurisdiction and powers of that Board are exercised under the General Prisons (Ireland) Act, 1877, and the provisions of this Act with respect to the orders and regulations of the Secretary of State shall apply to the orders and regulations of such Board.

40 & 41 Vict. c. 49.

Saving of 29 & 30 Vict. c. 109, s. 88, as to forces when on board Her Majesty's ships.

186. Nothing in this Act shall affect the application of the Naval Discipline Act, or any Order in Council made thereunder, to any of Her Majesty's forces when embarked on board any ship commissioned by Her Majesty, and the auxiliary forces shall be deemed to be part of Her Majesty's forces within the meaning of that Act.

The provision of the Naval Discipline Act here referred to is s. 88, and is as follows:—

“Her Majesty's land forces when embarked on board any of Her Majesty's ships shall be subject to the provisions of this Act to such extent and under such regulations as Her Majesty, her heirs, and successors, by any Order or Orders in Council shall at any time or times direct.”

The Queen's Regulations, 1885, Sect. XVII, para. 73, enjoin officers to observe the Order in Council which is printed in M.M.L., p. 779.

Definitions.

Application of Act to Channel Islands and Isle of Man.

187. This Act shall apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom, subject to the following modifications:

- (1.) The provisions of this Act relating to billeting and the impressment of carriages shall not extend to the Channel Islands and the Isle of Man : Part V
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- (2.) For the purposes of the provisions of this Act relating to the execution of sentences of penal servitude or imprisonment, and to prisons, the Channel Islands and the Isle of Man shall be deemed to be colonies, and any sentence of penal servitude or imprisonment passed in any of those islands shall be deemed to have been passed in a colony :
- (3.) For the purposes of the provisions of this Act relating to the auxiliary forces the Channel Islands shall be deemed to be colonies :
- (4.) For the purposes of the provisions of this Act relating to the militia the Isle of Man shall be deemed to be a colony.

Sub-section (2). The effect of this provision is to require soldiers sentenced to penal servitude or imprisonment in the Channel Islands or Isle of Man to be brought to the United Kingdom under the same circumstances as when they are sentenced in a colony. See section 131 (2).

Sub-section (4). The volunteers in the Isle of Man are subject to the same law as the volunteers in Great Britain.

188. Where a person subject to military law is on board a ship, this Act shall apply until he arrives at the port of disembarkation in like manner as if he and the officers in command of him were on land at the place at which he embarked on board the said ship, subject to this proviso, that, if he is tried and sentenced while so on board ship, any finding and sentence so far as not confirmed and executed on board ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation. Application
of Act to
ships.

This section provides for the trial of military offenders on board ship, or for offences committed on board ship. Under it the soldier will carry with him on board ship the military law to

Part V. — which he was subject at the time when he embarked. Consequently an officer holding a warrant to convene courts-martial at the place of such embarkation would be able to convene a court-martial on board ship. On the other hand, if a man is tried on board ship, the sentence can be confirmed and executed at the place of disembarkation, by the officer who would have had authority to confirm it if the court-martial had been convened and the trial held at that place.

As to troops embarked on board Her Majesty's ships, see s. 186 and note.

Interpreta-
tion of
term "active
service."

189. (1.) In this Act, if not inconsistent with the context, the expression "on active service" as applied to a person subject to military law means whenever he is attached to or forms part of a force which is engaged in operations against the enemy, or is engaged in military operations in a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country.

(2.) Where the governor of a colony in which any of Her Majesty's forces are serving, or if the forces are serving out of Her Majesty's dominions, the general officer commanding such forces, declares at any time or times that, by reason of the imminence of active service, or of the recent existence of active service, it is necessary for the public service that the forces in the colony or under his command, as the case may be, should be temporarily subject to this Act, as if they were on active service, then, on the publication in general orders of any such declaration, the forces to which the declaration applies shall be deemed to be on active service for the period mentioned in the declaration, so that the period mentioned in any one declaration do not exceed three months from the date thereof.

(3.) If at any time during the said period the governor or general officer for the time being is of opinion that the necessity continues he may from time to time renew such declaration for another period not exceeding three months, and such renewal shall be published and have effect as

the original declaration, and if he is of opinion that the said necessity has ceased, he shall state such opinion, and on the publication in general orders of such statement, the forces to which the declaration applies shall cease to be deemed to be on active service.

(4.) Every such declaration, renewal of declaration, and statement by the governor of a colony shall be made by proclamation published in the official gazette of the colony, and it shall be the duty of every governor or general officer making a declaration or renewal of a declaration under this section, if he has the means of direct telegraphic communication with a Secretary of State, to obtain the previous consent of the Secretary of State to such declaration or renewal, and in any other case to report the same with the utmost practicable speed to the Secretary of State.

(5.) The Secretary of State may, if he thinks fit, annul a declaration or renewal purporting to be made in pursuance of this section, without prejudice to anything done by virtue thereof before the date at which the annulment takes effect, and until that date any such declaration or renewal shall be deemed to have been duly made in accordance with this section, and shall have full effect.

It will be observed that the power given by this section to anticipate, or prolong as it were, the period of active service is given to the Governor in a colony, and to the General when out of the Queen's dominions. The declaration of the Governor must be by proclamation in the official gazette, but it does not take effect as regards the forces until the declaration has been published in general orders. On such publication the troops will be deemed to be on active service, although active service, as defined by the Act, has not actually begun or has ended.

For definition of colony, see s. 190 (23).

190. In this Act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them ; that is to say, Interpreta-
tion of
terms.

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- (1.) The expression "Secretary of State" means one of Her Majesty's Principal Secretaries of State :
- (2.) The expression "Lord Lieutenant of Ireland" includes the lords justices or other chief governor or governors of Ireland :
- (3.) The expression "Commander-in-Chief" means the field-marshal or other officer commanding in chief Her Majesty's forces for the time being :
- (4.) The expression "officer" means an officer commissioned or in pay as an officer in Her Majesty's forces, or any arm, branch or part thereof ; it also includes a person who, by virtue of his commission, is appointed to any department or corps of Her Majesty's forces, or of any arm, branch, or part thereof ; it also includes a person, whether retired or not, who, by virtue of his commission or otherwise, is legally entitled to the style and rank of an officer of Her Majesty's said forces, or of any arm, branch, or part thereof :

Warrant and other officers holding honorary commissions are officers within the meaning of this Act subject to the exceptions in this Act mentioned :

- (5.) The expression "non-commissioned officer" includes an acting non-commissioned officer, and includes an army schoolmaster when not a warrant officer, but save as in this Act mentioned does not include a warrant officer not holding an honorary commission :
- (6.) The expression "soldier" does not include an officer as defined by this Act, but, with the modifications in this Act contained in relation to warrant officers and non-commissioned officers, does include a warrant officer not having an honorary commission and a non-commissioned

officer, and every person subject to military law during the time that he is so subject :

- (7.) The expression "superior officer," when used in relation to a soldier, includes a warrant officer not holding an honorary commission, and also includes a non-commissioned officer as above defined.
- (8.) The expressions "regular forces" and "Her Majesty's regular forces" mean officers and soldiers who by their commission, terms of enlistment, or otherwise, are liable to render continuously for a term military service to Her Majesty in any part of the world, including, subject to the modifications in this Act mentioned, the Royal Marines and Her Majesty's Indian forces, and the Royal Malta Fencible Artillery, and subject to this qualification that when the reserve forces are subject to military law such forces become during the period of their being so subject part of the regular forces ;
- (9.) The expression "reserve forces" means the army reserve force and the militia reserve force :

* * * * *

Sub-sections (10) and (11) are repealed by the Reserve Forces Act, 1882 (45 & 46 Vict. c. 48), and that Act enacts (s. 28) that in the Army Act, 1881, the expressions "army reserve force" and "militia reserve force" shall respectively mean the army reserve and militia reserve under the Reserve Forces Act, 1882.

- (12.) The expression "auxiliary forces" means the militia, the yeomanry, and the volunteers :
- (13.) The expression "militia" includes the general and the local militia :
- (14.) The expression "volunteers and volunteer forces" includes the Honourable Artillery Company of London
- (15.) The expression "corps"—

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(A) In the case of Her Majesty's regular forces—

- (i.) Means any such military body, whether known as a territorial regiment or by any different name, as may be from time to time declared by Royal Warrant to be a corps for the purposes of this Act, and is a body formed by Her Majesty, and either consisting of associated battalions of the regular and auxiliary forces, or consisting wholly of a battalion or battalions of the regular forces, and in either case with or without the whole or any part of the permanent staff of any of the auxiliary forces not included in such military body ; and
- (ii.) Means the Royal Marine forces, in this Act referred to as the Royal Marines ; and also
- (iii.) Means the Army Service Corps, the Army Hospital Corps, and any other portion of Her Majesty's regular forces, by whatever name called, which is declared by Royal Warrant to be a corps for the purposes of this Act ; and also
- (iv.) Means any other portion of Her Majesty's regular forces employed on any service and not attached to any corps as above defined ;
- (v.) And any reference in Part II of this Act to a corps of the regular forces shall be deemed to refer to any such military body as is hereinbefore defined to form a corps ; and

(B) In the case of Her Majesty's auxiliary forces—

- (i.) Means any such military body, whether known as a territorial regiment or by any different name, as may be from time to time declared by Royal Warrant to be a corps for the purposes of this Act, and is a body formed by Her Majesty, and either consist-

ing of associated battalions of the regular and auxiliary forces, or consisting wholly of forces, and either inclusive or exclusive of the whole or any part of the permanent staff of any part of the auxiliary forces ; and

Part V.
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(ii.) Means any other portion of Her Majesty's auxiliary forces employed in any service, and not attached to any corps as above defined :

- (16.) The expression "battalion," in the application of this Act to cavalry, artillery, or engineers, shall be construed to mean regiment, brigade, or other body into which Her Majesty may have been pleased to divide such cavalry, artillery, or engineers :
- (17.) The expression "regimental" means connected with a corps, or with any battalion or other subdivision of a corps :
- (18.) The expression "military decoration" means any medal, clasp, good-conduct badge, or decoration :
- (19.) The expression "military reward" means any gratuity or annuity for long service or good conduct ; it also includes any good-conduct pay or pension and any other military pecuniary reward :
- (20.) The expression "enemy" includes all armed mutineers, armed rebels, armed rioters, and pirates :
- (21.) The expression "India" means any territories the government of which is vested in Her Majesty by or in pursuance of the Act of the session of the twenty-first and twenty-second years of the reign of Her present Majesty, Chapter one hundred and six, intituled "An Act for the better government of India," and the

Part V
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Acts amending the same, and also any territories in India under the dominion of any native prince or princes :

- (22.) The expression "native of India," means a person triable and punishable under Indian military law as defined by this Act :
- (23.) The expression "colony," means for the purposes of this Act Cyprus and any part of Her Majesty's dominions, exclusive of the United Kingdom, the Channel Islands, and the Isle of Man, and India, and all territories and places being part of Her Majesty's dominions which are under one legislature shall be deemed for the purposes of this Act to constitute one colony ; and where there are local legislatures as well as a central legislature the expression "legislature" means the central legislature only :
- (24.) The expression "foreign country" means any place which is not situate in the United Kingdom, a colony, or India, as above defined, and is not on the high seas :
- (25.) The expression "beyond the seas" means out of the United Kingdom, the Channel Islands, and Isle of Man ; and the expression "station beyond the seas" includes any place where any of Her Majesty's forces are serving out of the United Kingdom, the Channel Islands, and Isle of Man :
- (26.) The expression "governor-general" in its application to India means the Governor-General of India in Council :
- (27.) The expression "governor" as respects the presidency of Bengal means the Governor-General of India in Council, and as respects the presidencies of Madras and Bombay means the Governor in Council of the presidency, and in its application

to a colony includes the lieutenant-governor or other officer administering the government of the colony : Part V.

- (28.) The expressions "oath" and "swear," and other expressions relating thereto, include affirmation or declaration, affirm or declare, and expressions relating thereto, in cases where an affirmation or declaration is by law allowed instead of an oath :
- (29.) The expression "superior court" in the United Kingdom, means Her Majesty's High Court of Justice in England, the Court of Session in Scotland, and Her Majesty's High Court of Justice at Dublin :
- (30.) The expression "supreme court" means, as regards India, any high court or any chief court ; and the expression "court of superior jurisdiction," as regards a colony, means a court exercising in that colony the like authority as the High Court of Justice in England :
- (31.) The expression "civil court" means, with respect to any crime or offence, a court of ordinary criminal jurisdiction, and includes a court of summary jurisdiction :
- (32.) The expression "prescribed" means prescribed by any rules of procedure made in pursuance of this Act :
- (33.) The expression "misdemeanor," as far as regards Scotland, means a crime or offence, and so far as regards India means a crime punishable by fine and rigorous or simple imprisonment at the discretion of the court :
- (34.) The expression "Summary Jurisdiction Acts"—
 - (a.) As regards England has the same meaning as in the Summary Jurisdiction Act, 1879 : "Summary Jurisdiction Acts,"
42 & 43 Vict.
c. 49.
 - (b.) As regards Scotland, means the Summary 27 & 28 Vict.
c. 53.

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Procedure Act, 1864, and any Acts amending the same ; and

- (c.) As regards Ireland, means within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district ; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same :

14 & 15 Vict.
c. 43.

" Court of
summary
jurisdiction."

42 & 43 Vict.
c. 49.

(35.) The expression " court of summary jurisdiction "—

- (a.) As regards England, has the same meaning as in the Summary Jurisdiction Act, 1879 ; and
- (b.) As regards Ireland, means any justice or justices of the peace, police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to ; and
- (c.) As regards Scotland, means the sheriff or sheriff substitute, or any two justices of the peace sitting in open court ; or any magistrate or magistrates to whom jurisdiction is given by the Summary Procedure (Scotland) Act, 1864 ; and
- (d.) As regards India, a colony, the Channel Islands, and Isle of Man, means the court, justices, or magistrates who exercise jurisdiction in the like cases to those in which the Summary Jurisdiction Acts are applicable :

27 & 28 Vict.
c. 53.

(36.) The expression " court of law " includes a court of summary jurisdiction :

(37.) The expression " county court judge " includes—

- (a.) In the case of Scotland, the sheriff or sheriff substitute ; and

(b.) In the case of Ireland, the judge of the Civil Bill Court : Part V.

- (38.) The expression "constable" includes a high constable and a commissioner, inspector, or other officer of police :
- (39.) The expression "police authority" means the commissioner, commissioners, justices, watch committee, or other authority having the control of a police force :
- (40.) The expression "horse" includes a mule, and the provisions of this Act shall apply to any beast of whatever description used for burden or draught, or for carrying persons, in like manner as if such beast were included in the expression "horse."

(4.) *Officer.* This includes half pay and every other description of officer, though not subject to military law.

(6.) *Soldier.* This expression practically includes all persons subject to military law other than officers.

Modifications. See ss. 182, 188.

(8.) *Regular Forces.* This definition includes the marines. The distinction between the regular and other forces is that, as a rule, the regular forces are liable to serve continuously in any part of the world.

(15.) *Corps.* As the corps is the unit for the purposes of enlistment and some other purposes under the Act, a power is given to Her Majesty by warrant to declare any portion of the forces to be a corps for the purposes of the Act, but even in cases where a warrant has not been issued, a portion of the regular or auxiliary forces employed on any service, and not attached to any corps as defined by the Act or such warrant, become a corps for the purposes of the Act. See the Warrant now in force, and M.M.L., Chapter XI, paras. 4-6.

(21.) *India.* It will be observed that India for the purposes of the Act includes the dominions of Indian native princes.

(23.) *Colony.* India is not treated as a colony for the purposes of the Act.

The reference to a central legislature refers to such a case as Canada, where the Dominion parliament assembled at Ottawa is the central legislature, and the provincial parliaments for the provinces of Quebec, Ontario, &c., are local legislatures. Under the definition, the whole of Canada being under one central

Part V. legislature will be one colony, and the provinces of Quebec, Ontario, &c., will be parts of that colony, and not separate colonies, for the purposes of the Act.

(24.) *Foreign country.* This includes the whole world, with the exception of the United Kingdom, India, and the colonies.

(25.) *Beyond the seas.* It will be observed that the Channel Islands and the Isle of Man, though for certain purposes treated as colonies (see s. 187), are treated as not being beyond the seas.

(35.) *Court of Summary Jurisdiction.* The expression "summary conviction" is not defined by the Act, but means a conviction by a court of summary jurisdiction as defined by this section, and does not refer to the summary award of punishment by a commanding officer or to any other military proceeding.

By virtue of the definition in the Summary Jurisdiction Act, 1879, a "court of summary jurisdiction" means, in England, a police or stipendiary magistrate, and also any justice of the peace, including a mayor, who is *ex officio* a justice; but for hearing a case the court must consist of two justices, or of one police or stipendiary magistrate.

The expression "authorised prison" is not defined by this section, but is defined, as regards military convicts, by s. 62, and as regards military prisoners, by s. 65.

It may be observed that under 13 and 14 Vict., c. 21, in the construction of every Act of Parliament, masculine words include the feminine, the plural includes the singular, and the singular includes the plural; the word "month" means a calendar month, and "oath," "affidavit," and "swear," include affirmation, declaration, and affirm or declare. But this enactment does not apply to documents not Acts of Parliament, and therefore in any such document, *e.g.*, a warrant, "month" will mean lunar month, and "oath" will not include affirmation, &c.

Throughout the Act a year means twelve calendar months, and may be held to commence on any day in any month.

PART VI.

COMMENCEMENT AND APPLICATION OF ACT
AND REPEAL.

191. (1.) This Act shall come into force in every place on the day fixed for the commencement in that place of the Regulation of the Forces Act, 1881, and shall continue in force as if a reference to this Act were substituted for the reference to the Army Discipline and Regulation Act, 1879, in the Army Discipline and Regulation (Annual) Act, 1881, and that Act shall be construed accordingly.

Commence-
ment and
duration of
Act.
44 & 45 Vict.
c. 57.
42 & 43 Vict.
c. 33.
44 & 45 Vict.
c. 9.

(2.) Any warrant, order, rule, or regulation under this Act may be made at any time after the passing thereof, so that the same do not take effect until the commencement thereof.

(3.) Any reference in any Act, regulation, rule, order, warrant, charge, or document, to the Army Discipline and Regulation Act, 1879, or any enactment repealed by this Act, shall be construed to refer to this Act and to the corresponding enactment of this Act.

Sub-section (3). Under this sub-section and s. 5 of the Army Discipline and Regulation (Commencement) Act, 1879, any reference in any Act, regulation, &c., to the Mutiny Act (Army or Marines) or Articles of War will be deemed to refer to the corresponding enactment of this Act.

192. This Act, while in force, shall apply to all soldiers whether enlisted before or after the commencement of this Act, in like manner as if they were enlisted under this Act, subject as follows :

Application
of Act.

- (1.) A soldier enlisted before the commencement of this Act may, when on service beyond the seas, be detained in army service after the time at which

(A.M.L.)

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he would otherwise be entitled to be transferred to the reserve by the same authority and for the same period by and for which he may be detained under this Act while a state of war exists.

(2.) In the case of soldiers enlisted or re-engaged before the commencement of the Army Discipline and Regulation Act, 1879, who have not consented to the application to them of the provisions of Part II of that Act, Part II of this Act shall nevertheless, so far as is consistent with the tenor thereof, apply to such soldiers (in this section referred to as old soldiers) but subject to the exceptions provided by this section.

(3.) The following provisions, namely,—

(a.) The whole of section seventy-nine (which section relates to reckoning and forfeiture of service);

(b.) So much of section eighty-seven as allows a soldier to be detained in service otherwise than while a state of war exists or while he is on service beyond the seas;

(c.) So much of section eighty-eight as relates to any person continuing in army service for a period during which his service may be prolonged; and

(d.) The whole of section eighty-nine (which section relates to the power to transfer a soldier to the reserve before the expiration of his term of army service),

shall not apply without his consent to any such old soldier.

(4.) Any re-engagement entered into by a soldier at any time since the commencement of the Army Discipline and Regulation Act, 1879, shall be deemed to be a consent by him to the application to him of the above-named provisions; and any old soldier who, after the commencement of this Act, extends his army service for all or any part of the residue of the unexpired term of his

original enlistment, or gives notice to his commanding officer of his desire to continue in Her Majesty's service, shall be deemed to have consented to the application to him of the above-named provisions. Part VI.

- (5.) For the purpose of discharge or of transfer to the reserve, the service of any old soldier, to whom section seventy-nine of this Act does not apply, shall be reckoned in accordance with the enactments in accordance with which it would have been reckoned if the Army Acts, 1879 and 1881, and this Act had not passed.

Provided that such service may with the consent of the soldier and the approval of the competent military authority, as defined by Part II of this Act, be reckoned from the date of his attestation without any deduction on account of age, imprisonment, desertion, absence without leave, or otherwise, or without deduction on account of any one or more of such matters.

- (6.) Any old soldier shall not be liable to be detained in service, or have his service prolonged without his consent, further or otherwise than he would have been liable to if the Regulation of the Forces Act, 1881, and this Act had not passed.
- (7.) Nothing in sub-sections (4) and (5) of section eighty-three of this Act, shall extend without his consent to any soldier who enlisted on or after the 20th day of June, 1867, and before the 9th day of August, 1870, and who has not re-engaged.
- (8.) Where a man was enlisted before the commencement of this Act, nothing in this Act shall require him, without his consent, to serve in or to be appointed, transferred, posted, or attached to any military body otherwise than he might have been if this Act had not passed, or to serve

Part VI.
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for any longer period than that for which he was, before the commencement of this Act, liable to serve.

As to this section, see M.M.L., Chapter X, paras. 18-20.

Repeal.

193. The Acts specified in the Fifth Schedule to this Act are hereby repealed as from the commencement of that Act to the extent in the third column of that Schedule mentioned.

Provided that—

- (a.) The said repeal shall not affect anything done or suffered, or any rights or liabilities acquired or accrued before the commencement of this Act, and any proceedings for carrying into effect anything commenced or done before the commencement of this Act may be carried on and completed as if this Act had not passed.
- (b.) All rules, regulations, warrants, orders, and documents made or issued in pursuance or for the purposes of the Acts repealed shall continue as if made or issued in pursuance or for the purposes of this Act.
- (c.) Where in any place before the commencement of this Act, a court-martial has been convened for the trial of an offender, such trial may be carried on, and the offender may be sentenced and punished, in the same manner in all respects as if this Act had not passed.
- (d.) Subject as aforesaid, every offence committed against the Army Discipline and Regulation Act, 1879, may be tried and punished in like manner as if it had been committed against this Act; so, however, that a person shall not be subject to any greater punishment for such offence than he is subject to before the commencement of this Act.

- e. Subject as aforesaid, this Act shall apply to the conviction of a person tried under any Act hereby repealed as if he had been convicted under this Act, and every sentence imposed under any Act hereby repealed may, after the commencement of this Act, be carried into effect in the same manner in all respects as if it had been imposed under this Act. Part VI,
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* * * *

Sub-section (f) is repealed by the Reserve Forces Act, 1882.

FIRST SCHEDULE.

Form of Oath to be taken by a Master whose Apprentice has absconded, and of Justice's Certificate annexed.

I, A.B., of _____ do make oath, that I am by trade
a _____, and that _____ was bound
to serve as an apprentice to me in the said trade, by indenture
dated the _____ day of _____ for the term of _____
years; and that the said _____ did on or about the
_____ day of _____ abscond and quit my service without
my consent; and that to the best of my knowledge and belief
the said _____ is aged about _____ years. Witness
my hand at _____, the _____ day of _____, 18 .
(Signed) A.B.

I hereby certify that the foregoing
affidavit was sworn before me
at _____, this _____
day of _____, 18 .
(Signed) C.D.,
Justice of the Peace
for _____.

Form of Oath to be taken by a Master whose Indentured Labourer in India or a Colony has absconded, and of Justice's Certificate annexed.

I, _____, of _____, do make oath that
_____ was bound to me to serve as an indentured
labourer by indenture dated the _____ day of _____ for
the term of _____ years, and that the said _____ did on
or about the _____ day of _____ abscond and quit my
service without my consent. Witness my hand at
the _____ day of _____, 18 .
(Signed) A.B.

I hereby certify, &c. [as for apprentice].

SECOND SCHEDULE.

BILLETING.

PART I.

Accommodation to be furnished by Keeper of Victualling House.

A keeper of a victualling house on whom any officer, soldier, or horse is billeted—

- (1.) Shall furnish the officer and soldier with lodging and attendance; and
- (2.) Shall, if required by the soldier, furnish him for every day of the march and for not more than two days, if the soldier is halted at an intermediate place on the march for more than two days, and on the day of arrival at the place of final destination, with one hot meal on each day, the meal to consist of such quantities of diet and small beer as may be from time to time fixed by Her Majesty's Regulations, not exceeding one pound and a quarter of meat previous to being dressed, one pound of bread, one pound of potatoes or other vegetables, and two pints of small beer, and vinegar, salt, and pepper; and
- (3.) When the soldier is not so entitled to be furnished with a hot meal, shall furnish the soldier with candles, vinegar, and salt, and allow him the use of fire, and the necessary utensils for dressing and eating his meat; and
- (4.) Shall furnish stable room and ten pounds of oats, twelve pounds of hay, and eight pounds of straw on every day for each horse.

PART II.*Regulations as to Billets.*

- (1.) When the troops are on the march the billets given shall, except in case of necessity or of an order of a

justice of the peace, be upon victualling houses in or within one mile from the place mentioned in the route :

- (2.) Care shall always be taken that the billets be made out to the less distant victualling houses in which suitable accommodation can be found before billets are made out for the more distant victualling houses :
 - (3.) Except in case of necessity, where horses are billeted each man and his horse shall be billeted on the same victualling house :
 - (4.) Except in case of necessity, one soldier at least shall be billeted where there are one or two horses, and two soldiers at least where there are four horses, and so in proportion for a greater number :
 - (5.) Except in case of necessity, a soldier and his horse shall not be billeted at a greater distance from each other than one hundred yards :
 - (6.) When any soldiers with their horses are billeted upon the keeper of a victualling house who has no stables, on the written requisition of the commanding officer present the constable shall billet the soldiers and their horses, or the horses only, on the keeper of some other victualling house who has stables, and a court of summary jurisdiction upon complaint by the keeper of the last-mentioned victualling house may order a proper allowance to be paid to him by the keeper of the victualling house relieved :
 - (7.) An officer demanding billets may allot the billets among the soldiers under his command and their horses as he thinks most expedient for the public service, and may from time to time vary such allotment :
 - (8.) The commanding officer may, where it is practicable, require that not less than two men shall be billeted in one house.
-

THIRD SCHEDULE

IMPRESSMENT OF CARRIAGES.

TABLE OF RATES OF PAYMENT FOR CARRIAGES AND ANIMALS.

Carriages and Animals.	Rate per Mile.
<i>In Great Britain.</i>	
A waggon with four or more horses, or a wain with six oxen, or four oxen and two horses	One shilling.
A waggon with narrow wheels, or a cart with four horses, carrying not less than fifteen hundredweight	Ninepence.
Any other cart or carriage, with less than four horses, and not carrying fifteen hundredweight	Sixpence.
<i>In Ireland</i>	
For every hundredweight loaded on any wheeled vehicle	One halfpenny.

The mileage when reckoned for the purposes of payment shall include the distance from home to the place of starting and the distance home from the place of discharge.

Regulations as to Carriages and Animals.

(1.) Where the whole distance for which a carriage is furnished is under one mile the payment shall be for a full mile.

(2.) In Ireland, the minimum sum payable for a car shall be threepence, and for a dray, sixpence per mile.

(3.) In Great Britain, when the day's march exceeds fifteen miles, the justice granting his warrant may fix a further reasonable compensation for every mile travelled, not exceeding, in respect of each mile, the rate of hire authorised to be charged by this Act; when any such additional compensation

is granted, the justice shall insert in his own hand in the warrant the amount thereof.

(4.) In Ireland the payment shall be at the same rate for each hundredweight in excess of the amount which the carriage is liable under this schedule to carry.

(5.) A carriage shall not be required to travel more than twenty-five miles.

(6.) A carriage shall not, except in case of pressing emergency, be required to travel more than one day's march prescribed in the route.

(7.) In Great Britain a carriage shall not be required to carry more than thirty hundredweight.

(8.) In Ireland a carriage shall not be required to carry, if a car, more than six hundredweight, and if a dray more than twelve hundredweight.

(9.) The load for each carriage shall, if required, at the expense of the owner of the carriage, and if the same can be done within a reasonable time without hindrance to Her Majesty's service, be weighed before it is placed in the carriage.

I do hereby certify that the prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he*

the before-mentioned corps, and I recommend† for a reward of s.

_____*Signature* } of com-
 _____*Residence* } mitting
 _____*Post Town* } magistrate.
 _____*Signature of prisoner.*
 _____*Signature of informant.*

Or where the prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming:

I hereby certify that the above-named prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the _____ day of _____ for the purpose of obtaining such evidence from a Secretary of State.

_____*Signature.*
 _____*Residence.*
 _____*Post Town.*

* Insert is or is not a deserter or absentee without leave from or belongs or does not belong to, as the case may be.

† The justice will insert the name of the person to whom the reward is due, and the amount [5s., 10s., 15s., or 20s.] which, in his opinion, should be granted in this particular case.

FIFTH SCHEDULE.

ACTS REPEALED.

Section and Chapter.	Title or Short Title.	Extent of Repeal.
47 Geo. III, sess. 2, c. 25	An Act for the more convenient payment of half-pay and pensions and other allowances to officers and widows of officers, and the persons upon the Compassionate List.	So much as is unrepealed.
42 & 43 Vict. c. 32	The Army Discipline and Regulation (Commencement) Act, 1879.	Section three, section seven, section eight, and the schedule.
42 & 43 Vict. c. 33	The Army Discipline and Regulation Act, 1879.	The whole Act, with the exception of section one hundred and seventy-seven.
44 & 45 Vict. c. 9.	The Army Discipline and Regulation (Annual) Act, 1881.	Sections four seven, both inclusive.
44 & 45 Vict. c. 57	The Regulation of the Forces Act, 1881.	Part II, with the exception of so much of sections thirty-eight and thirty-nine as relates to the auxiliary forces, and of section forty-five. In Part III, section fifty.

RULES OF PROCEDURE, 1881.

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1. Report of delay of trial under Army Act, 1881, s. 45.

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2. Duty of commanding officer as to investigation of charge for offence.
3. Hearing of charge.
4. Disposal of charge by commanding officer.
5. Procedure and summary of evidence on remand for trial by general or district court-martial.
6. Summary award of punishment by commanding officer.
7. Right of trial by court-martial in lieu of summary award.
8. Procedure on charge against officer.

Framing Charges.

9. Charge-sheet and charge.
10. Commencement of charge-sheet.
11. Contents of charge.
12. Validity of charge-sheet.

Prisoner's preparation for Defence.

13. Opportunity for prisoner to prepare defence.
14. Information of charge and delivery of list of officers to prisoner.
15. Joint trial of prisoners.

Convening of Court-Martial.

16. Convening of regimental court-martial.
17. Procedure of officer on convening court-martial.
18. Adjournment for insufficient number of officers.

19. Ineligibility and disqualification of officers for court-martial.
20. Corps of members of court-martial.
21. Rank of members of court-martial in certain cases.

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23. Inquiry by court as to amenability of prisoner, and validity of charge.

Procedure at Trial.—Challenge and Swearing.

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25. Proceedings for challenge of members of court.
26. Swearing of members.
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28. Substitution of solemn declaration for oath.
29. Form of oath in case of trial of several prisoners.
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36. Procedure after plea of "Guilty."
37. Withdrawal of plea of "Not Guilty."
38. Plea of "Not Guilty" and case for the prosecution.
39. Close of case for the prosecution and procedure for defence where prisoner does not call witnesses.
40. Defence where prisoner calls witnesses.
41. Summing-up by judge-advocate.

Finding and Sentence.

42. Consideration of finding.
43. Form and record of finding.
44. Procedure on acquittal.
45. Procedure on conviction.
46. Mode of forfeiting seniority of rank of officer.
47. Sentence.
48. Recommendation to mercy.
49. Signing and transmission of proceedings.

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- 52. Promulgation.
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- 58. Responsibility of president.
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- 67. Presence throughout of all members of court.
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(A.M.L.)

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Forms of Charges.

SECOND APPENDIX.

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THIRD APPENDIX.

Forms of Commitment.

RULES OF PROCEDURE.

PART I.—ARREST AND TRIAL.

Arrest

1. The special report of the necessity for further delay in ordering a court-martial to assemble for the trial of an officer or soldier required under section 45 of the Army Act, 1881, shall be made by means of a letter from the commanding officer of such officer or soldier reporting such necessity to the general or other officer commanding the district, garrison, or station.

Report of delay of trial under Army Act, 1881, s. 45.

See generally as to Rules 1-8, chapter II, and Q.R., 1885, Sect. VI, para. 16, *et seq.*

This rule prescribes the manner in which the special report required by s. 45 of the Army Act is to be made. A similar report must be furnished weekly until the prisoner is released or a court-martial assembled; and on the receipt of every such report, the general or other officer in command must satisfy himself as to the necessity for the continued detention of the prisoner. Q.R., 1885, Sect. VI, para. 17.

Power of Commanding Officer.

2. Every commanding officer will take care that a person under his command, when charged with an offence, is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him, without the charge being investigated, unless such investigation seems to him impracticable with due regard to the public service. Every case of detention beyond a period of forty-eight hours, and the reason thereof, shall be reported by the commanding officer to the general or other officer commanding the district, garrison, or station.

Duty of commanding officer as to investigation of charge for offence.

Commanding Officer. See Rule 128 and note.

This Rule applies to officers as well as soldiers.

Investigated.—Army Act, s. 45 (5). This means that the investigation must be commenced, though it may be impossible to complete it within the time here specified. As to exclusion Sunday, Good Friday, and Christmas Day, see Rule 134 (A).

Is not detained in custody, &c.—A commanding officer who unnecessarily detains a prisoner in arrest or confinement, exposes himself to a charge under s. 21 (1) of the Army Act.

Shall be reported.—The report should be made by letter, and should refer specifically to the case, and state the reasons justifying the detention and preventing the investigation. The absence of an important witness would justify a remand; or the prisoner might be ordered to return to his duty, with a distinct intimation that his case will be investigated so soon as the absent witness can be obtained. Q.R., 1885, Sect. VI, para. 38.

Hearing of
charge.

3. (A) Every charge against a soldier will be heard in the presence of the accused. The accused will have full liberty to cross-examine any witness against him, and to call any witnesses and make any statement in his defence.

(B) If, in the case of absence without leave exceeding seven days, the accused demands that the evidence against him be taken on oath, the oath will be administered to each witness by the investigating officer in the same form as provided for a court-martial, or, in the case of a witness allowed before a court-martial to make a solemn declaration, the like solemn declaration will be made before the investigating officer.

(A) As to the mode of conducting the investigation, see chapter II, paras. 18-28; and Q.R., 1885, Sect. VI, paras. 32-40.

The Army Act and Rules do not require the investigation to be by the commanding officer, but do make him responsible for the decision, s. 46 (1). The evidence is not taken in writing, and, therefore, in the case of a remand, must be taken in writing afterwards as directed by Rule 5.

(B) *Taken on oath*—See s. 46 (6) of the Army Act.

Same form.—See Rule 80.

To make a solemn declaration.—See Army Act, s. 52 (4), and Rule 80 (D).

Disposal of
charge by
commanding
officer.

4. (A) The commanding officer will dismiss a charge brought before him if in his opinion the evidence does not show that some offence under the Army Act, 1881, has been committed, or if, in his discretion, he thinks the charge ought not to be proceeded with.

(B) At the conclusion of the hearing of a charge, if the commanding officer is of opinion that the charge ought to be proceeded with, he shall, without unnecessary delay, dispose of the case, either summarily if the accused is a soldier, or, whether the accused is or not a soldier, by remanding him for trial by court-martial, or by reference to the proper superior military authority.

(C) If the accused is remanded for trial by court-martial, the commanding officer shall without unnecessary delay either issue an order for the assembly of a court-martial, or apply to the proper military authority to convene a court-martial, as the case requires; this delay and any delay in the reference to superior military authority should not ordinarily exceed thirty-six hours.

(A) Every offence which a person subject to military law can

commit is an offence against the Army Act, because it is either a military offence or a civil offence. If it is a civil offence, it is provided for by s. 41; if it is a military offence, it is either particularly specified in the Act, or is an act to the prejudice of good order and military discipline under s. 40. Where the act done is not a civil offence, and is not specified in the Act, the commanding officer must consider whether it is or not to the prejudice of good order and military discipline, as, if not, it is not a military offence. He must also consider whether, having regard to the limitations of time prescribed by the Act (sections 158 (1), 161), the prisoner is liable to be proceeded against. Q.R., 1885, Sect. VI, para. 37.

Ought not to be proceeded with.—If the commanding officer is of this opinion, on account either of the evidence being doubtful, or of the triviality of the case, or of the prisoner's good character; or of a doubt whether the act done is to the prejudice of good order and military discipline, or as a matter of discretion, for any reason, he must dismiss the case. Army Act, s. 46; Q.R., 1885, Sect. VI, para. 36. To make an entry against the man without punishment is not dismissal of the case. The case must also be dismissed if the man has been previously acquitted or convicted of the offence by his commanding officer, or by any court, military or civil, Army Act, ss. 46 (7), 157, 162 (6). No particular time is fixed within which a commanding officer must dispose of a case, so that he can always carefully consider a difficult case; but as a rule he should decide immediately, and should never delay for more than a day, unless further evidence is required.

(B) There is no offence which a commanding officer is *compelled* by the Act or Rules to send before a court-martial; but the offence of drunkenness by a private soldier must in certain cases be disposed of summarily, Army Act, s. 46 (3). Under para. 35 of Q.R., 1885, Sect. VI, it is the duty of the commanding officer to refer certain charges to superior authority, unless he is of opinion that delay is inexpedient, in which case he may dispose of the charge himself, reporting his action and his reasons for it to the officer to whom he would otherwise have referred.

As to the course to be followed, where sufficient evidence is not forthcoming at the investigation, or where a second offence is disclosed during the investigation, see Q.R., 1885, Sect. VI, paras. 38, 39.

Proper military authority, see Rules 133 (A), 134 (B).

(C) *Without unnecessary delay.*—The order for a regimental court-martial should as a rule be issued so as to admit of the court assembling next day, care being taken to allow the interval of eighteen hours required by Rule 14 (A). If the commanding officer has not at his disposal sufficient officers for a full regimental court-martial, he should apply to a superior officer to convene the court.

Thirty-six hours.—As to exclusion of Sunday, &c., in reckoning time, see Rule 134 (A).

5. (A) Where the accused is remanded by his commanding officer for trial by general or district court-martial, the evidence of the witnesses who were present before the commanding officer shall be taken down in writing in a narrative form in the presence of the prisoner, who, if there is any variance between the evidence of any witness so taken down and the evidence previously given before

Procedure and summary of evidence on remand for trial by general or district court-martial.

the commanding officer, shall be allowed to put questions to the witness with reference to such variance, and such questions with the answers shall be added in writing to the evidence taken down.

(B) The evidence of each witness when taken down as provided in (A) shall be read over to him and shall be signed by him, or, if he cannot write his name, shall be attested by his mark and witnessed. Any statement of the prisoner material to his defence shall be added in writing.

(C) The above evidence and the statement, if any, shall be taken down before the commanding officer, or such officer as he directs; and if the commanding officer thinks it desirable, he may re-hear the case and re-consider his decision and dispose of it as provided by Rule 4 (B).

(D) The evidence and statement (if any) taken in pursuance of this rule (in these rules referred to as the summary of evidence), or a true copy thereof, shall be laid before the court-martial before whom the prisoner is tried on the assembly of the court.

(E) A true copy thereof shall, if the case is such as appears to the convening officer to render it desirable, be given to the prisoner gratis, and in any other case shall, if the prisoner so requests, be given to him on payment of one penny for every seventy-two words, and where the prisoner has not obtained a copy of the summary of evidence, the court should permit him to inspect the summary, or the copy thereof, laid before the court, or may order a copy thereof to be given to the prisoner gratis.

(C) The commanding officer, on deciding to remand the accused for trial by court-martial, may direct another officer to take the evidence in writing. On this being done, a different aspect may be given to the case; if so, the commanding officer may reconsider his decision. The prisoner must be allowed to put any reasonable question to a witness, and to put questions respecting any variance between the evidence taken down and that given before the commanding officer, such, *e.g.*, as would arise if the witness's answers in cross-examination before the commanding officer were omitted. In taking the evidence immaterial statements may be omitted; the material statements only of the prisoner are to be added, but it will be advisable usually to take down fully any statement he makes; he cannot be required to sign it. The statement of a prisoner can only be given in evidence at the trial, if it is voluntary (see ch. IV, paras. 74 to 81). Before, therefore, a prisoner makes any statement, he should be warned that he is not bound to say anything, and that any statement he makes may be used as evidence against him; and, if he is asked for his defence, a similar warning should be given to him; and in no case must he be authoritatively called on to account for his proceedings, or required to make any statement.

(D) The convening officer should always order a copy of the summary to be given to the prisoner, if the case is complicated. The discretion is given for the purpose of making it unnecessary

to give the prisoner a copy when the facts are very simple. For the power to dispense with this rule, see Rule 102.

Where the prisoner is charged with several offences, the evidence in relation to each offence should be kept, so far as possible, distinct.

The evidence and statement are not required to be taken down in the case of a remand for trial by a regimental court-martial.

As to summary of evidence at trial, see Rule 17 (E), and note.

6. (A) The term of imprisonment when awarded by a commanding officer in days shall begin on the day of the award. The term of imprisonment when awarded by a commanding officer in hours shall begin at the hour when the prisoner is received at the provost prison, or the public prison, military or civil, to which he is committed, or if he has not been sooner received into the prison, shall begin on the day after the day of the award at the hour fixed for the commitment and release of prisoners.

Summary
award of
punishment
by com-
manding
officer.

(B) When the commanding officer has once awarded punishment for an offence, he cannot afterwards increase that punishment for that offence.

Commanding officers must bear in mind the regulations as to summary award of punishments, Q.R., 1885, Sect. VI, paras. 42-50; and as to drunkenness, *ib.* paras. 51-59. See also ch. II, paras. 31-38.

(A) A commanding officer will award his sentence, up to seven days, in hours, but if exceeding seven days, in days, Q.R., 1885, Sect. VI, para. 42 (2). In law (in the absence of special provision) there is no division of a day, and, therefore, however late in the day a prisoner is committed, his term of imprisonment is considered to have commenced at the first minute of that day, that is, the first minute after midnight. Where, therefore, the sentence is awarded in days, the sentence will begin on the first minute of the day of the award. But where a sentence is awarded in hours, the imprisonment by virtue of this rule will not commence until the hour at which the prisoner is received into the prison, or if he is not received into the prison on the day of the award, then until the hour at which on the next day prisoners are usually received into the prison. This rule will, therefore, allow a commanding officer, when there is no accommodation in the provost prison, to postpone the commitment of the prisoner for one day, and to keep him in the guard-room without his term of imprisonment beginning to run, till the usual hour of commitment on the next day after the imprisonment is awarded, whether Sunday or not (see Rule 134 A); but if he is kept longer in the guard-room, his term of imprisonment will begin to run. It must be recollected that a prisoner's pay cannot be stopped for any day on which he is detained, before his imprisonment begins to run under this rule.

(B) The award is considered final when the prisoner has been removed from the presence of the commanding officer. The commanding officer can at any time afterwards diminish the punishment, though he cannot add to it. See also Rule 7 (D).

As to entry of award or decision of commanding officer in each case, Q.R., 1885, Sect. VI, paras. 34, 50.

Right of
trial by
court-
martial in
lieu of sum-
mary award.

7. (A) A soldier who, in consequence of the summary award of his commanding officer, will suffer any deduction from his ordinary pay, shall have the same right to be tried by a district court-martial as if he were ordered by his commanding officer to suffer that deduction.

(B) If the prisoner will, in consequence of the summary award of his commanding officer, suffer any deduction from his ordinary pay, or is ordered by the summary award of his commanding officer to suffer imprisonment or to pay a fine, or to suffer any deduction from his ordinary pay, the commanding officer will inform the soldier of his right to be tried by a district court-martial, and will ask him if he wishes to be so tried. If the commanding officer omits to ask the above question, the soldier may at any time on the same day before the hour fixed for the commitment and release of prisoners claim his right to be tried by a court-martial.

(C) If the soldier, upon the above question being put to him or otherwise, claims his right to be tried by a court-martial, the commanding officer will remand him for trial by court-martial; the court, if the soldier demands it, must be a district court-martial, but otherwise may, if the commanding officer thinks fit, be a regimental court-martial.

(D) Except as mentioned in this rule, a soldier has no right to claim a trial by court-martial instead of submitting to the summary award of his commanding officer, but the commanding officer may, if he thinks proper, vindicate the justice of his award finding the soldier guilty by remanding him for trial by court-martial instead of punishing him summarily, but he must do so before the soldier leaves his presence after the award is made.

(A) *Right to be tried.*—The Act does not in terms give a soldier a right of *appeal* from the award of the commanding officer, but gives him, in the cases mentioned in this rule, a right to be tried by court-martial, instead of *submitting* to the award of his commanding officer. Sect. 46 (8). The effect is that the court-martial tries the case afresh, and awards punishment without regard to the commanding officer's proceedings. If it were an appeal, their functions would be more limited. The claim of the soldier to be tried is not of itself a reason for awarding a severer punishment than the commanding officer could have awarded; and the cases must be rare in which it will be proper to award a severer punishment.

Procedure
on charge
against
officer.

8. (A) Where an officer is charged with an offence under the Army Act, 1881, the investigation shall be held, and the evidence taken in his presence in writing, if he requires it, in the same manner, as nearly as circumstances admit, as is required by Rules 3 and 5 in the case of a soldier.

(B) Where an officer is ordered for trial by court-martial

without any such taking of evidence in his presence, an abstract of the evidence to be adduced shall be delivered to him gratis not less than twenty-four hours before his trial, and shall be laid before the court-martial on its assembly.

(A) The effect of this provision is to give the commanding officer the option of dispensing with any public proceeding preliminary to trial, unless the accused officer demands it. It does not preclude the commanding officer from calling the officer before him and investigating the case as he may deem necessary. The officer, however, can only demand the formal investigation of his case by the commanding officer, and has no right under this Rule to demand a court of inquiry.

(B) The convening officer will be responsible for the preparation and furnishing of this abstract, which should not be too much in detail. It should always be delivered as a matter of course, even though the subject matter of the charge may previously have been investigated by a court of inquiry; and if a court of inquiry has been held, the officer may have a copy of its proceedings. See Rule 123 (H).

Where there are several charges, the abstract should be divided so as to correspond to each charge.

For the power to dispense with observance of this rule on the ground of military exigencies, or the necessities of discipline, see Rule 102.

Framing Charges.

9. (A) A charge-sheet contains the whole issue or issues to be tried by a court-martial at one time. Charge-sheet and charge.

(B) A charge means an accusation contained in a charge-sheet that a person amenable to military law has been guilty of an offence.

(C) A charge-sheet may contain one charge or several charges.

The convening officer is by Rule 17 made responsible for the charge, which in practice is usually framed by the adjutant, or some other officer under the direction of the convening officer.

10. Every charge-sheet will begin with the name and description of the person charged, and should state, in the case of an officer, his name, and rank, and corps (if any), and in the case of a soldier, his name, number, rank, and corps (if any), and where he does not at the time of the trial belong to the regular forces should show by the description of him, or directly by an express averment, that he is amenable to military law in respect of the offence charged. Commencement of charge-sheet.

The name or description of a person charged is immaterial, so long as his identity is established. In military courts it is also necessary to establish that he is subject to military law. As an officer or soldier of the regular forces is always subject to military law, a statement that the prisoner belongs to a battalion composed of the regular forces, will be sufficient to aver, and evidence of his so belonging will be sufficient to prove, without expressly adding

the words, that he is subject to military law, but it is desirable, as a rule, to add the words "a soldier of the regular forces." If the prisoner belongs to the auxiliary forces or reserves, the charge must state, and the court must by evidence or from their military knowledge be satisfied, that he was at the time of the offence subject to military law. If he is a civilian, or if his name and position are unknown, as may happen in the case of active service, the charge should expressly aver that he was subject to military law, although it will be sufficient if the description of the prisoner is such as to imply that he was so subject. Evidence must be given of the fact, as for instance that he was a sutler, or the holder of a pass from the officer in command, or that he was found in camp or under such circumstances as to show that he was subject to military law. See illustrative form No. 9, p. 494.

Contents of charge.

11. (A) Each charge should state one offence only, and in no case should an offence be described in the alternative in the same charge.

(B) Each charge should be divided into two parts—

- (1) The statement of the *offence*; and,
- (2) The statement of the *particulars* of the act, neglect, or omission constituting the offence.

(C) The offence should be stated, if not a civil offence, in the words of the Army Act, 1881, and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words.

(D) The *particulars* should state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect, or omission is intended to be proved against him as such offence.

(E) The *particulars* in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as is so referred to shall be deemed to form part of the first-mentioned charge as well as of the other charge.

(F) Where it is intended to prove any facts in respect of which any deduction from ordinary pay can be awarded as a consequence of the offence charged, the *particulars* should state those facts.

(A) to (C) See First Appendix, Forms of Charges, and Preliminary Note as to use of Forms of Charges, p. 476.

Words of the Army Act, 1881.—Under Rule 133 (C), this will include the words of any other Act creating the offence, such for instance as the Acts relating to the reserve or auxiliary forces. Where the offence is under any such Act, care must be taken to observe this rule. See Note as to use of Forms of Charges (25), p. 479.

Although the description of an offence in the alternative in the same charge would make the charge bad, it does not therefore follow that the word "or" is never to appear in the charge. For instance a charge under section 15 of the Act of "when in garrison, being found beyond the limits fixed by general orders

without a pass or written leave from his commanding officer" is a good charge, because in this case he is not charged with one offence or the other, but with a single offence, which is constituted by his having neither a pass nor written leave. If in the charge the words "beyond the limits fixed by general or garrison orders" were used, the charge would be a bad charge, because it might be one offence to be beyond the limits fixed by general orders, and another offence to be beyond the limits fixed by garrison orders.

(D) If of the acts or omissions indicated in the particulars sufficient are not proved to constitute the offence charged, but nevertheless other acts and omissions not so indicated sufficient to constitute the offence are proved, the prisoner is entitled to be acquitted of the charge, but may be detained in custody and be tried anew in respect of the last-mentioned acts or omissions. For instance, if the prisoner is charged with having been absent without leave, in that he was absent from his regiment without leave on the 10th, 11th, and 12th days of August, and he proves that on those three days he was in barracks on duty, but it appears from the evidence that he was absent without leave on the 21st of the same month, the date is so material as to amount to a new charge, and the prisoner must be acquitted, though he may be tried on a new charge of being absent without leave on the 21st of August. In such a case a special finding is of no avail, as it cannot introduce new material particulars not mentioned in the charge. See note to Rule 43 (C).

If, however, he were charged with being absent from the 10th of August until he was apprehended on the 21st, and it is proved that he was absent during that time, but that his absence began on the 1st of August and he was apprehended on the 23rd, he may be convicted, as the material part of the charge, absence from the 10th to the 21st of August, is proved.

When there is such a divergence between the head of charge and the statement of the particulars that each in substance discloses a different offence, the charge is bad, and a conviction, even on a plea of guilty, could not be upheld. But the incidental mention of a separate offence in the particulars would not of itself invalidate the charge. A charge of desertion in which the particulars alleged that the prisoner broke out of barracks on a certain day, and was absent without leave for a certain time, was held to be good, inasmuch as these facts were mentioned as incidents of the offence charged, and the prisoner was still distinctly informed that the charge he had to meet was one of desertion. So was a charge of desertion (in which the duration of the absence was an element) where the particulars stated that the prisoner absented himself without leave for the time stated. Where the head of charge discloses no offence, but the statement of particulars does, and with sufficient precision to inform the prisoner of his offence, a conviction of the offence disclosed in the particulars was, notwithstanding the irregularity, held good.

Where the head of charge states an offence but the statement of particulars discloses no offence, the charge is not invalid, if taken as a whole it informs the prisoner of the allegations he is called upon to meet, and the offence for which he is arraigned.

(E) An instance of this will be seen in Form No. 48 of the illustrative forms added at the end of the First Appendix. If in such cases the prisoner were to be acquitted of the first charge and convicted of the second charge, the conviction when recorded should specify the place and date mentioned in the first charge.

(F) If these facts are stated in the charge, evidence must be given by the prosecution to show the amount which ought to be deducted from the prisoner's pay.

By Q. R., 1885, Sect. VI, para. 80, the value of any article in respect of which it is desired that the court shall sentence the offender to stoppages must be stated in the particulars. It is, however, unnecessary to state the value of regimental necessities, as a court-martial does not award stoppages for them. As to evidence of value, see note to s. 24 (4).

Validity of
charge-
sheet.

12. (A) A charge-sheet shall not be invalid by reason only of any mistake in the name or description of the person charged, if he does not object to the charge-sheet during the trial, and it is not shown that injustice has been done to the person charged.

(B) In the construction of a charge-sheet or charge there shall be presumed in favour of supporting the same every proposition which may reasonably be presumed to be impliedly included though not expressed therein.

(A) Although the trial of an offender is not invalid on account of a mistake in a name, such mistakes are dangerous, in so far as they may lead to mistakes of substance. For instance, the prisoner might thus be mistaken for a man named in a certificate of previous conviction or in the defaulters' book, and a mistake of this description might cause the invalidity of the whole proceeding. Where, however, a man has enlisted and is commonly known under an assumed name, he may be described by that name. The court has power to amend the charge by correcting any mistake in the prisoner's name or description under Rule 33 (A).

(B) The object of this paragraph is purely legal, and does not touch the duties of an officer. If the proceedings were questioned in a court of law it would require that court to presume matters which, though not stated in the charge, were necessary to support its validity.

Prisoner's Preparation for Defence.

Opportunity
for prisoner
to prepare
defence.

13. A prisoner for whose trial a court-martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses, and with any friend or legal adviser whom he may wish to consult.

The freest communication which is consistent with good order and military discipline and with the safe custody of the prisoner should be allowed. A failure to give the prisoner full opportunity of preparing his defence, and free communication with others for the purpose, may invalidate the proceedings.

The prisoner is not bound to call as witnesses every one with whom he communicates with reference to giving evidence.

As to friend of prisoner in court, see Rule 85; and as to counsel at general courts-martial, Rules 86-92.

As to the right of the prisoner to consult the judge-advocate on questions of law, see Rule 101 (A).

14. (A) The prisoner before he is arraigned should be informed by an officer of every charge on which he is to be tried ; and also that, on his giving the names of any witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly ; the interval between his being so informed and his arraignment should not be less, in the case of a regimental court-martial, than eighteen and in the case of any other court-martial, than twenty-four hours.

Information of charge and delivery of list of officers to prisoner.

(B) The officer at the time of so informing the prisoner should give the prisoner a copy of the charge-sheet, and, where the prisoner is a soldier, should, if necessary, explain the charge-sheet and charges to him, and should also, if he is illiterate, read the charges to him.

(C) A list of the names, rank, and corps (if any), of the president and officers who are to form the court, and where officers in waiting are named, also of those officers, should, as soon as the president and officers are named, be delivered to the prisoner if he desires it.

(D) If it appears to the court that the prisoner is liable to be prejudiced by any non-compliance with this rule, the court should take steps, and, if necessary, adjourn to avoid the prisoner being so prejudiced.

Arraigned. See chapter III, para. 49.

(A) By Rule 77 (A) the convening officer, or, after the assembly of the court, the president of the court, is required to take the proper steps to procure the attendance of witnesses whom the prisoner desires to call. Commanding officers will therefore take care that any request of the prisoner for witnesses shall be transmitted to the convening officer, or, after the court is convened, to the president of the court. The request of a prisoner should only be refused, if it is quite clear that the evidence of the witness will be immaterial, or if it is impossible to secure the attendance of the witness within a reasonable time. Any refusal of his request should be communicated to the court, with the reasons for the refusal, and the court will deal with the matter under paragraph (D). See also Rule 76.

In the case of an essential witness the court should always adjourn for the purpose of enabling him to attend, as the absence of such a witness may cause the proceedings to be invalid.

(B) A copy must always be given, unless the provisions of this rule are dispensed with under Rule 102. Even where they are dispensed with, the full charge must be clearly explained to the prisoner, as otherwise he has not proper opportunity to make his defence. If the prisoner objects to the charge, he will have an opportunity of making his objection when called on to plead. Rule 32.

(C) In the case of a general court-martial, this list should invariably be delivered, although a request is not made. In the case of a district court-martial also, the list should be delivered, notwithstanding the absence of a request, if there is any reason to suppose from the circumstances of the case, that the prisoner may reasonably object to any member of the court.

The prosecutor will usually be the officer on whom the duty of complying with the provisions of Rule 14 devolves; when he is not, he should, before the trial, satisfy himself that it has been complied with. Compliance with this rule, as well as with Rule 13, may be dispensed with on the ground of military exigencies, or the necessities of discipline, by virtue of Rule 102; but in every case the prisoner must have information of the charge, and opportunity of calling his witnesses.

(D) See note above on (A).

Joint trial of
prisoners.

15. Any number of prisoners may be tried together for an offence charged to have been committed by them collectively, but in such case notice of the intention to try the prisoners together should be given to each prisoner at the time of his being informed of the charge, and any prisoner may claim, either by notice to the authority convening the court, or, when arraigned before the court, by notice to the court, to be tried separately, on the ground that the evidence of one or more of the other prisoners proposed to be tried together with him will be material to his defence; the convening authority or court, if satisfied that such evidence will be material, and if the nature of the charge admits of it, shall allow the claim, and such prisoner shall be tried separately.

If the nature of the charge.—In the case of conspiring to cause a mutiny, or joining in a mutiny, the essence of the charge is combination between the prisoners. In such a case, the nature of the charge may not admit of their being tried separately. In case of doubt, the prisoners should be tried separately.

See Rule 70 and note.

Convening of Court-Martial.

Convening of
regimental
court-
martial.

16. A regimental court-martial shall be ordered to assemble as soon as seems to the convening officer practicable (having regard to Rule 14 (A)), after the completion of the investigation by the commanding officer into the charge which the court-martial is to try.

See Army Act, s. 47, Q.R., 1885, Sect. VI, para. 75. For form see Appendix II, Form No. 3.

A regimental court-martial should assemble as soon as possible after the interval, which is required by Rule 14 (A), between the prisoner being informed of the charge and the meeting of the court. Where, therefore, that rule is suspended by an order under Rule 102, the court should assemble immediately.

The officer convening a regimental court-martial will appoint or detail (see Rule 17, D) not less than three officers as members of the court, each of whom must have held a commission during not less than one whole year. The above number (which is the legal minimum for a regimental court-martial) includes the president who is also appointed by the convening officer, and must not be under the rank of captain, except in the case of the court being held on the line of march, or on board a ship, or unless the convening officer is of opinion that a captain is not, with due regard

to the public service, available. In the latter case he must state that opinion in the order convening the court. In any of the above excepted cases he can appoint an officer of any rank to be president; but he can in no case appoint himself, or, indeed, sit on the court-martial. Army Act, ss. 47 (3) (4); 50 (2).

17. (A) An officer before convening a court-martial should first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Army Act, 1881, and that the evidence justifies a trial on those charges, and if not so satisfied should order the release of the prisoner, or refer the case to superior authority.

Procedure of officer on convening court-martial.

(B) He should also satisfy himself that the case is a proper one to be tried by the description of court-martial which he proposes to convene.

(C) If more than *fifteen* days in the United Kingdom, or more than *thirty* days elsewhere, elapse between the time when an officer having power to convene a general or district court-martial receives an application for a court-martial, and the date at which the case is disposed of, either by the assembly of a general or district court-martial, or otherwise, the officer shall report the case, and the reasons for the delay, to the commander-in-chief.

(D) The officer convening a court-martial shall appoint or detail the officers to form the court, and may also appoint or detail such waiting officers as he thinks expedient.

(E) The officer convening a court-martial shall send to the officer appointed president the original charge-sheet on which the prisoner is to be tried, and the summary or abstract of evidence.

(A) and (B). With respect to the duties of the convening officer, see chapter III, paras. 28-33; and Q.R., 1885, Sect. VI, paras. 60-88.

(C) The convening officer must state in the order convening the court his opinion in the following cases:—

(1) As to the rank of the president (see Army Act, s. 47 (4), 48 (9)).

(2) As to the rank of members (Rule 21).

(3) As to members belonging to different corps or regiments (see Rules 20, 21).

The opinion as to military exigencies dispensing with certain rules (see Rule 102) should be in a separate order, signed by the convening officer.

(D) See generally as to a general or district court-martial, the number of members and their qualification and rank, and the rank of the president, Army Act, ss. 48, 182 (4); Q.R., 1885, Sect. VI, para. 95.

The convening officer must appoint by name the president of a general or district court-martial, who must not be under the rank of field officer, unless—

(i) the convening officer is under that rank; or

(ii) the convening officer is of opinion that a field officer is not, with due regard to the public service, available.

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In either of such cases he may appoint an officer not below the rank of captain; and in the case of a district court-martial, if he thinks a captain is not, with due regard to the public service, available, may appoint an officer below that rank, unless the court is to try a warrant officer. Army Act, ss. 48 & 182 (4). But whenever a general officer or colonel is available to sit as president of a general court-martial, an officer of inferior rank is not to be appointed. Q.R., 1885, Sect. VI, para. 95 (a).

The legal minimum of a general court-martial in the United Kingdom, India, Malta, and Gibraltar is nine, and elsewhere five.

The legal minimum of a district court-martial in the United Kingdom, India, Malta, and Gibraltar is five, and elsewhere three. Army Act, s. 48 (3), (4).

Under s. 53 of the Army Act a court-martial, which, after the commencement of the trial, is reduced below the legal minimum, is dissolved. The Queen's Regulations, 1885 (Sect. VI, para. 93), therefore point out that where the trial is likely to be prolonged it is desirable to form a general court-martial of more than the legal minimum, in order that the court may not be dissolved, if one member falls through illness or otherwise. In such case not less than thirteen officers should usually be appointed, or if thirteen cannot conveniently be assembled, eleven. In the case of a district court-martial it will seldom be necessary to appoint more than the legal minimum, as it is unusual for a trial before a district court-martial to extend beyond two days, and little inconvenience will usually arise from the dissolution of the court, as if the proceedings have not been concluded, the prisoner can be tried by another court.

It will usually be desirable, in the case of a general court-martial where the trial is likely to be prolonged, to add two or more waiting officers, in order to fill the places of officers retiring on a challenge, and the same course will not unfrequently be expedient in convening a district court-martial. Q.R., 1885, Sect. VI, para. 93.

(E) The object of this is to enable the original charge-sheet to be annexed to the proceedings, and also to enable the president of the court-martial to examine before the court meets the charge sheets and summary of evidence in the different cases, so that he may have a general knowledge of the cases which are to come before the court. If any amendment in the charges appears to him to be required he should communicate with the convening officer before the trial begins. See above, Rule 5 (D).

The summary of evidence may be used at the trial for the purpose of showing that the witness has contradicted himself or has made a particular statement; and during the trial the president should compare the evidence given by each witness with his statement contained in the summary of evidence, and if there is any material variance should question the witness respecting the variance.

The summary of evidence cannot otherwise be used as evidence, and if the witness is absent, must not be read or referred to by the court so far as it relates to that witness. Great care must be taken by the members of the court not to be biassed in any way by the statements in the summary of evidence, except so far as they affect the credibility of the witness by showing that he has contradicted himself; indeed, it may usually be expedient that no one but the president should refer to the summary.

Any statement of the prisoner contained in the summary of

evidence, if not taken contrary to the directions in note to Rule 5 (C), may, and usually should, be read to the court as evidence, whether it is in favour of or against the prisoner.

Where the prisoner pleads guilty, the summary of evidence is to be annexed to the proceedings (see App. II, para. 4, p. 518). If the prisoner pleads not guilty, the summary may be destroyed, but it will usually be convenient to annex it to the proceedings, and it ought to be so annexed in any case, where there is a material variance between the statement of any witness in the summary and his evidence at the trial.

18. (A) If before the prisoner is arraigned the full number of officers detailed are not available to serve, by reason of non-eligibility, disqualification, challenge, or otherwise, the court should ordinarily adjourn for the purpose of fresh members being appointed; but if the court are of opinion that in the interests of justice, and for the good of the service, it is inexpedient so to adjourn, they may, if not reduced in number below the legal minimum, proceed, recording their reasons for so doing.

Adjournment for insufficient number of officers.

(B) If the court adjourns for the purpose of the appointment of a new president, or of fresh members, whether under these rules or otherwise, the convening officer may, if he thinks fit, convene another court.

(A) Under this paragraph a court for which, say, thirteen members have been detailed, will not ordinarily begin the trial with less than thirteen, although they *may* proceed, unless reduced below the legal minimum (see notes to Rules 16, 17). The court should always adjourn, unless there are strong reasons against it.

If at any time the number of officers is, from whatever cause, below the legal minimum, or the president is absent (Rule 64 (B)), there is no court; if the proceedings under Rule 22 are not begun, no court can be formed; if they are begun they must immediately cease. In either case a report of the circumstances should be made to the convening officer by the president, or, if he is absent, by the senior officer present.

(B) *New President.*—This will apply if the president is found to be ineligible or disqualified (Rules 19, 22), or not to be of the required rank (Rule 22 (A) iv), or if an objection to the president is allowed (Army Act, s. 51 (3), and Rule 25), or if the president cannot attend (Army Act, s. 53 (2)).

Fresh Members.—The court will adjourn under the circumstances mentioned in paragraph (A) of this rule, as to which see Rules 19, 22, and 25, and Army Act, s. 51. After the trial has once begun, fresh members cannot be appointed in any circumstances, s. 53 (1).

19. (A) An officer is not eligible for serving on a court-martial if he is not subject to military law.

Ineligibility and disqualification of officers for court-martial.

(B) An officer is disqualified for serving on a court-martial on a prisoner if such officer—

(i.) Is the officer who convened the court; or

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- (ii.) Is the prosecutor or a witness for the prosecution;
or
- (iii.) Investigated the charges before trial, or was a member of a court of inquiry respecting the matters on which the charges against the prisoner are founded ; or
- (iv.) Is the commanding officer of the prisoner, or of the corps or battalion to which the prisoner belongs ; or
- (v.) Has a personal interest in the case.

(c.) An officer is not eligible to serve on a court-martial unless he has held a commission during not less than the following periods next preceding the day appointed for the assembling of the court, that is to say:—

- (i.) If it is a regimental court-martial, one whole year;
- (ii.) If it is a district court-martial, two whole years;
- (iii.) If it is a general court-martial, three whole years.

(A) *Eligible* is used with reference to an officer being subject to military law, and of the necessary standing. It refers, in point of fact, to the status of the officer, and involves no personal considerations.

(B) *Disqualified*, on the other hand, is used with reference to personal disqualification on the part of an officer.

It will be observed that most of the disqualifications are contained in the Army Act, s. 50 (2), (3).

Except so far as provided by Rule 20, the corps to which an officer belongs is immaterial as regards his eligibility or qualification to serve on a court-martial, for the Army Act, s. 50 (1) provides that "the officers sitting on a court-martial may belong to the same or different corps, or may be unattached to any corps, and may try persons belonging or attached to any corps."

(iii.) *Investigated*.—This will not include the officer who merely takes the summary of evidence, nor the captain of a company who makes a preliminary inquiry into the case, but will only include the officer who conducted the official investigation, whether the commanding officer himself or an officer deputed by him.

(v.) *Personal interest*.—This will extend to even a remote or very small interest ; for example, in a charge relating to the embezzlement of a sum, however small, belonging to the regimental mess, every officer of that mess has a personal interest, and is therefore disqualified. A remote or even a merely technical interest has been held to disqualify a person in a judicial position. For example, a person who holds as trustee or otherwise on behalf of others money in which he has no beneficial share himself, nevertheless has a personal interest in any charge relating to that money.

(C) This is taken from the Army Act, ss. 47 (2), 48 (3) (4).

Corps of
members of
court-
martial.

20. (A) A general or district court-martial shall, as far as seems to the convening officer practicable, be composed of officers of different corps, and in no case shall be composed exclusively of officers of the same regiment of

cavalry, or the same battalion of infantry, unless the convening officer states in the order convening the court that in his opinion other officers are not (having due regard to the public service), available, and also, if he belongs to the same regiment of cavalry or battalion of infantry as the prisoner, that an order to convene a court composed partly of other officers cannot be obtained from superior authority within a reasonable time.

(B) In the case of a court-martial for the trial of a prisoner belonging to the auxiliary and not to the regular forces, unless the convening officer states in the order convening the court that in his opinion it is not (having due regard to the public service) practicable, two members at least of the court should belong to the auxiliary forces, and one or both of those members of the court should belong to the branch of the auxiliary forces to which the prisoner belongs.

(A) General and district courts-martial are army and not regimental courts, and are therefore to be composed of officers who do not belong to the same regiment.

(B) For example, if the prisoner is a volunteer, two members of the court must, if practicable, belong to the auxiliary forces, and one at least ought to be a volunteer officer.

In applying this rule, it must be recollected that officers of the yeomanry or volunteers are usually not subject to military law, and, except when so subject, are not eligible to serve on a court-martial.

21. (A) In the case of a general court-martial, five at least of the members must not be below the rank of captain.

Rank of members of court-martial in certain cases.

(B) The members of a court-martial for the trial of an officer shall be of an equal, if not superior, rank to that officer, unless, in the opinion of the convening officer, to be stated in the order convening the court and to be conclusive, officers of that rank are not (having due regard to the public service) available; and in no case shall an officer under the rank of captain be a member of a court-martial for the trial of a field officer.

(A) Army Act, s. 48 (3).

(B) The last two lines are taken from the Army Act, s. 48 (7).

On the trial of a subaltern officer, two officers of subaltern rank will be a sufficient proportion to be detailed as members of the court.

Whenever a general officer or colonel is available, an officer of inferior rank is not to be appointed president of a general court-martial.

When a commanding officer of a corps is brought to trial, as many members of the court as possible must be officers who have themselves held, or who are holding, commands equivalent to that held by the prisoner. Q.R., 1885, Sect. VI, para. 95.

Procedure at Trial.—Constitution of Court.

Inquiry by
court as to
legal consti-
tution.

22. (A) On the court assembling, the order convening the court shall be read, and also the names, rank, and corps of the officers appointed to serve on the court; and it shall be the first duty of the court to satisfy themselves that the court is legally constituted; (that is to say),

- (i.) That so far as the court can ascertain, the court has been convened in accordance with the Army Act, 1881, and these Rules;
- (ii.) That the court consists of a number of officers not less than the legal minimum, and, save as mentioned in Rule 18, not less than the number detailed;
- (iii.) That each of the officers so assembled is eligible and not disqualified for serving on that court-martial;
- (iv.) That the president is of the required rank and duly appointed; and
- (v.) In the case of a general court-martial that the officers are of the required rank.

(B) The court should further, if it is a general or district court-martial to which a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed, and is not disqualified for acting at that court-martial.

(c) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

It is of great importance for the court, as far as lies in their power, to ascertain that they have jurisdiction. See M.M.L., chapter VIII.

(A) See Appendix II, Form of Proceedings, para. (1) pp. 514, 515.

(i) The sections of the Army Act relating to the convening of courts-martial are ss. 47, 48, 49, 50, 122, 123; in the case of marines, s. 179; in the case of Her Majesty's Indian forces, s. 180; in the case of warrant officers, s. 182 (4); and in the case of persons not belonging to Her Majesty's forces, s. 184 (1). The rules referring to the convening of the court are Rules 17 to 21.

The court, in considering whether they are convened in accordance with the Act and Rules, can only look at the order convening the court, and cannot inquire whether the officer issuing the order has or has not a warrant which justifies the issue of the order. But they must have regard to Rules 20 and 21, and should see that the order states all that it is required to state. (See note to Rule 17.)

(ii) *Legal minimum*, see Army Act, ss. 47, 48, and note on Rule 17. In counting the number of officers the president is included.

(iii) applies to the president as well as to the other officers.

As to eligibility and non-disqualification, see Rule 19 and note, and chapter III, para. 37.

(iv) As to rank of president, see Army Act, ss. 47 (4), 48 (9), 182 (4). If the president in the case of a general or district court-martial is not a field officer, it will be necessary to ascertain that a proper statement is in the order convening the court. See note to Rule 17 (D).

(v) *Required rank.* See Rule 21, and note.

(B) See Rule 99. The court must consider whether the judge-advocate is appointed by the proper authority as well as in the proper manner. In the United Kingdom, therefore, they should ascertain that the judge-advocate is appointed by the Judge-Advocate-General. Out of the United Kingdom, if the judge-advocate is appointed by the convening officer, the court must assume that that officer is authorised by a warrant to appoint the judge-advocate.

23. (A) The court, when satisfied on the above matters, should satisfy themselves in respect of each charge about to be brought before them,—

Inquiry by court as to amenability of prisoner and validity of charge.

(i.) That it appears to be laid against a person amenable to military law, and to the jurisdiction of the court; and

(ii.) That each charge discloses an offence under the Army Act, 1881, and is framed in accordance with these rules, and is so explicit as to enable the prisoner readily to understand what he has to answer.

(B) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

(A) *Satisfy themselves.* See Appendix II, Form of Proceedings, para. (1), pp. 514, 515.

Amenable to military law.—See introductory observations to Part V of the Army Act, p. 320, *et seq.*

Amenable to the jurisdiction of the Court.—The following are examples of cases where the prisoner would not be amenable:—if the court were a regimental court-martial and the prisoner were a warrant officer or camp follower (Army Act, s. 182 (1), 184 (1); or if a reserve man were charged with an offence committed when not subject to military law, unless the offence be one mentioned in the Reserve Forces Act, 1882, ss. 6, 15; if the prisoner were a field officer, and the court comprised a member under the rank of captain (Army Act, s. 43 (7), and Rule 21 (B); if the court were a field general court-martial under s. 49, and the prisoner was not under the command of the convening officer, or the offence charged was not committed against the property or person of an inhabitant of or resident in the country.

In the case of persons not belonging to the forces, the question of amenability may depend on whether such person is subject to military law as an officer (Army Act, s. 175 (7) (8), or as a soldier (see Army Act, s. 176 (9), (10)).

Where the prisoner is a marine, the question whether he is amenable or not (see s. 179 (1)) cannot be apparent to the court, and therefore at this stage of the proceedings the court must presume that the prisoner is amenable, unless the prisoner challenges their jurisdiction on some ground which appears to them

reasonable and probable; in that case they should refer to the convening officer.

Questions of amenability may also possibly arise with reference to natives of India (see Army Act, ss. 175 (7), 176 (10), and 180 (2) (a)).

Framed.—See Rules 10 and 11.

The inquiry by the court under Rules 22 and 23 is not required to be, but may be, in closed court.

Procedure at Trial.—Challenge and Swearing.

Appearance
of prosecutor
and prisoner.

24. When the court have satisfied themselves as to the above facts, the prosecutor, who must be a person subject to military law, should take his place, and the court shall cause the prisoner to be brought before the court.

The duty of appointing the prosecutor devolves on the convening officer, who, in the trial of a soldier, ordinarily selects the adjutant of the prisoner's regiment. In trials by general court-martial, and in complicated cases, a prosecutor should be specially selected for his experience and knowledge of military law, and should be, as far as possible, relieved from ordinary military duties, so that he may be enabled fully to master the case.

As to counsel, see Rules 86, 87.

Proceedings
for challenge
of members
of court.

25. (A) The court, upon the prisoner being brought before them, shall ascertain that the court is constituted of officers to whom the prisoner makes no reasonable objection.

(B) The prisoner has no right to object to the prosecutor or judge-advocate.

(C) The prisoner shall state the names of all the officers to whom he objects before any objection is disposed of.

(D) The prisoner may call any person to give evidence in support of his objection.

(E) If more than one officer is objected to, the objection to each officer will be disposed of separately, and the objection to the lowest in rank will be disposed of first; and on an objection to an officer, all the other officers present shall vote on the disposal of such objection, notwithstanding that objections have been made to any of those officers.

(F) When an objection to an officer is allowed, that officer shall forthwith retire, and take no further part in the proceedings.

(G) When an officer objected to (other than the president) retires, and there are any officers in waiting, the vacancy shall be forthwith filled by one of the officers in waiting being directed to serve in lieu of the retiring officer. If there is no officer in waiting available, the court will proceed as directed by Rule 18.

(H) The eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy, includ-

ing that of president, will be ascertained by the court, as in the case of other officers appointed to serve on the court.

This rule must be read in connection with section 51 of the Army Act.

For Form, see Appendix II, Form of Proceedings, para. (2), p. 516.

(A) The prisoner cannot object to the court collectively, but must make each objection separately. If the prisoner persists in objecting to the court collectively, the court should treat the objection as made to all the members individually, and should deal with such objections in the usual way. The court may be closed to consider each objection. The objections, together with the statement of any witnesses examined are to be entered in the proceedings.

An officer objected to on the score of personal enmity, prejudice, or malice, or having formed and expressed an opinion on the case, should, unless the objection is obviously groundless, request and be permitted to withdraw.

Objections to individual members under this rule are quite distinct from a plea to the jurisdiction of the court (as to which see Rule 34), though an objection may be equivalent to a plea to the jurisdiction of the court; as, for example, when an objection is made to the rank of the president, or when on the trial of a field officer one of the members is objected to because he is below the rank of captain. In such case the objection should be allowed, although it might be raised subsequently under Rule 34.

(B) This is because the prosecutor and judge-advocate do not form a part of the court.

(D) The witnesses cannot be examined on oath, as the court are not yet sworn, but Rules 81 and 82 will substantially apply.

(E) As the objection to the lowest in rank is to be disposed of first, an objection to the president will not be disposed of until after the objection to any other members of the court. The object of the latter part of the paragraph is to secure a sufficient number of officers to determine the objections.

Other officers.—This excludes an officer from voting on his own case.

Present, i.e., who have not retired on the objection being allowed.

(F) An objection to the president is allowed, if allowed by one-third or more of the other officers appointed to form the court, and who have not retired. If the objection is allowed, the court must adjourn for the purpose of the appointment of another president. (See Rule 18 B, and note.) The convening authority must appoint another president, subject to the same right of the prisoner to object (Army Act, s. 51 (3), (4), or must convene a new court. (Rule 18 B.)

(G) *Directed to serve.*—This “prescribes,” under s. 51 (5) of the Army Act, the manner of filling a vacancy. It is the duty of the president to appoint one of the officers in waiting to fill a vacancy.

Proceed as directed by Rule 18.—That is, if the court are reduced in number below the legal minimum, they must adjourn for the purpose of the appointment of fresh members; and though not so reduced they should ordinarily adjourn unless they are of opinion that, in the interests of justice and for the good of the service, it is inexpedient to adjourn.

(H) Inasmuch as paragraph (H) directs that the eligibility and absence of disqualification of an officer filling a vacancy are to be ascertained by the court, as in the case of other members, the court will ascertain that he is eligible and not disqualified under Rule 19, before the prisoner is asked whether he objects to him, but as this does not form part of the recorded proceedings, it may be done by the court in the case of officers in waiting at the same time as the inquiry under Rule 22, before the prisoner is brought before them. The prisoner will be asked whether he objects to the new officer, and if he does the objection will be dealt with, if he is junior to any other officer objected to, immediately, if not, after the objections to any other officers who are junior to him have been disposed of. He will, though objected to, have to vote on the objection to any other officer who is junior to him. The court should always in a doubtful case allow an objection, as it is very important that the court should not only be impartial, but be believed by the prisoner and his comrades to be so.

Swearing of
members.

26. As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been over-ruled, the oath shall be administered to each member of the court as follows:—

- (i.) If there is a judge-advocate, the oath shall be administered by him to the president first, and afterwards to the other members of the court ;
- (ii.) If there is no judge-advocate, the oath shall be administered by the president to the other members of the court, and shall be administered to the president by any member of the court already sworn.

The form of oath is set out in s. 52 (1) of the Army Act. See Appendix II, Form of Proceedings (para. 2), p. 516.
As to mode of swearing, see note to Rule 30.

The oath may be administered to each member separately, or to two or more members collectively. Peers are sworn as other members.

A solemn declaration may be substituted for an oath under the circumstances specified in the Army Act, section 52 (4).

As to swearing the court to try several prisoners, see Rule 70.

Swearing of
judge-
advocate and
other
officers.

27. After the members of the court are all sworn, an oath shall be administered to the following persons, or to such of them as are present at the court-martial, by the president, or by some member of the court, or, except in the case of the judge-advocate, by the judge-advocate, if present, in the following form:—

(A) The form of oath for the judge-advocate shall be:

“You do swear that you will not, unless it is necessary for the due discharge of your official duties, divulge the sentence of this court-martial until it is duly confirmed; and that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any

particular member of this court-martial, unless thereunto required in due course of law. So help you God."

(B) The form of oath for an officer attending for the purpose of instruction shall be :

"You do swear that you will not divulge the sentence of this court-martial until it is duly confirmed ; and that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you God."

(c) The form of oath for a shorthand writer shall be :

"You do swear that you will truly take down to the best of your power the evidence to be given before this court-martial, and such other matters as you may be required, and will, when required, deliver to the court a true transcript of the same. So help you God."

(D) The form of oath for an interpreter shall be :

"You do swear that you will to the best of your ability truly interpret and translate, as you shall be required to do, touching the matter before this court-martial. So help you God."

See Army Act 52 (2), and note to Rule 30.

For Form see Appendix II. Form of Proceedings, para. 3), p. 516.

A solemn declaration may be substituted under the circumstances specified in the Army Act, s. 52 (4).

28. Where a person is permitted to make a solemn declaration instead of being sworn, the form of declaration shall be as follows ; that is to say :

Substitution of solemn declaration for oath.

(A) In the case of the president or other member of the court :

I, _____, do solemnly promise and declare that I will well and truly try the prisoner before the court according to the evidence, and that I will duly administer justice according to the Army Act now in force, without partiality, favour, or affection, and I do further solemnly promise and declare that I will not divulge the sentence of the court until it is duly confirmed, and further that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

(B) In the case of the judge-advocate :

I, _____, do solemnly promise and declare that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not, on any account, at any time whatsoever, disclose or discover the

vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

(c) In the case of an officer attending for the purpose of instruction :

I, _____, do solemnly promise and declare that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not, on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

(d) In the case of a shorthand writer :

I, _____, do solemnly promise and declare that I will truly take down to the best of my power the evidence to be given before this court-martial and when required will deliver to the court a true transcript of the same.

(e) In the case of an interpreter :

I, _____, do solemnly promise and declare that I will, to the best of my ability, faithfully and truly interpret and translate as I shall be required to do touching the matter now before this court-martial.

(f) The declaration shall be taken before some person authorised by these rules to administer the oath.

Permitted to make a solemn declaration.—This is permitted under the circumstances specified in the Army Act, s. 52 (4).

Giving wilfully false evidence on solemn declaration is punishable both by a military and civil court precisely as if the evidence were given on oath. See Army Act, ss. 29, 126 (2).

In case a solemn declaration is taken, a note should be added to the proceedings, stated that the individual has taken a solemn declaration instead of being sworn.

Form of oath
in case of
trial of
several
prisoners.

29. When the oath is administered to or the declaration taken by the members of a court who are about to try several prisoners, the plural shall be substituted for the singular wherever required.

Several prisoners, see Rule 70.

Swearing of
person
according to
the form of
his religion.

30. An oath may be administered in such form and with such ceremonies as the person to be sworn declares to be, according to his religion, binding on his conscience, and the words "You do swear" and "So help me God" may be omitted or varied for the purpose.

The oath will usually be administered as follows:—the person to be sworn will take the book in his right hand ungloved. The person administering the oath will repeat the oath, and, on the repetition being ended, the person to be sworn will say the words "So help me God," and kiss the book. The words of the oath should be said with distinctness, and solemnity by the person administering it.

The book must be the New Testament, or some book containing it. An oath taken on the Book of Common Prayer containing the Epistles and Gospels is properly taken, and a person violating the oath may be convicted of perjury.

In the case of a witness, it is well, in the interest of truth, to prevent subterfuges such as omitting the words "So help me God," or kissing the thumb instead of the book, as dishonest witnesses fancy that thus they escape the guilt of perjury.

If the above ceremonies are not in accordance with the religion of the person to be sworn, the ceremonies of his religion must be followed as provided by this rule. If he objects to take an oath, and the court are satisfied of the sincerity of the objection, or if he is objected to as incompetent to take an oath, and the court are satisfied that the oath has no binding effect on his conscience, the court should permit him to make a solemn declaration in the form directed by Rule 28, or in the case of a witness, Rule 80, Army Act, s. 52 (4).

A Jew is sworn on the Old Testament, with his head covered. In the case of a Roman Catholic the book is closed, and a cross is marked on the cover. In Scotland a member of the Scottish Church is sworn by holding up his right hand, and repeating the oath after the person administering it, but without touching the book. A Mahomedan is sworn on the Koran, sometimes kissing it or placing it on his head. In the case of natives of India, the form varies according to race, caste, and the part of the country, and it will be well to follow the practice of the civil courts of the district, and if they receive an affirmation instead of an oath, to receive such affirmation.

Prosecution, Defence, and Summing-up.

31. (A) After the members of the court and other persons are sworn as above mentioned, the prisoner shall be arraigned on the charges against him. Arraignment of prisoner.

(B) The charges upon which the prisoner is arraigned will be read to him, and he will be required to plead separately to each charge.

(A) *Arraigned.*—See chapter III, paras. 49, 50.

The prisoner is usually arraigned by the president or the judge-advocate. For Form see Appendix II, Form of Proceedings, para. (3), p. 517.

Where two or more prisoners are tried together for the same offence, each is separately arraigned.

(B) The charge-sheet containing the charges as settled by the convening officer will be in the possession of the president, Rule 17 (E), who will lay the charge-sheet before the court immediately before arraignment, and the charge-sheet will then be annexed to the proceedings. If any charge appears to the prosecutor to require amendment he should communicate with the convening officer before the trial begins.

32. The prisoner, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Army Act, 1881, or is not in accordance with these rules. Objection by prisoner to charge.

See Rules 9-12. For Form see Appendix II, Form of Proceedings, para. (3), p. 517. An objection to the jurisdiction of the court must be raised by way of special plea, Rule 34.

Amendment
of charge.

33. (A) At any time during the trial, if it appears to the court that there is any mistake in the name or description of the prisoner in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake.

(B) If on the trial of any charge it appears to the court, at any time before they have begun to examine the witnesses, that in the interests of justice any addition to, omission from, or alteration in, the charge is required, they may report their opinion to the convening authority, and may adjourn, and the convening authority may either direct a new trial to be commenced, or amend the charge, and order the trial to proceed with such amended charge after due notice to the prisoner.

(A) A mistake in name or description will only be amended, if it is clear to the court that the prisoner is the person intended to be charged in the charge-sheet, and that he is not prejudiced in his defence by the mistake having been made.

(B) The court may act under this paragraph whether the objection to the charge is taken by the prisoner or the judge-advocate, or by a member of the court, and either before or after the arraignment of the prisoner. (See Rules 23, 32.)

The witnesses.—That is, the witnesses on the substance of the charge, not witnesses as to objections to the officers, or with respect to a special plea to the jurisdiction.

If the addition, omission, or alteration can be met by means of a special finding under Rule 43 (as, for instance, by omitting some of the articles alleged to have been stolen or lost by neglect, or by correcting a mistake in an immaterial date), it will not usually be necessary to have the charge amended; but if the date is material, or if the charge appears not to disclose an offence under the Army Act, or if any addition requires to be made to the charge, it will be safer for the court to adjourn and apply for the amendment of the charge.

Special plea
to the jurisdic-
tion.

34. (A) The prisoner, before pleading to a charge, may offer a special plea to the general jurisdiction of the court; and, if he does so, and the court consider that anything stated in such plea shows that the court have not jurisdiction, they shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by the prisoner and reply by the prosecutor in reference thereto.

(B) If the court overrule the special plea they should proceed with the trial.

(C) If the court allow the special plea, they shall record their decision and the reasons for it, and report it to the convening authority and adjourn; such decision shall not require any confirmation, and the convening authority

shall either forthwith convene another court for the trial of the prisoner, or order the prisoner to be released.

(d) If the court are in doubt as to the validity of the plea, they may refer the matter to the convening authority, and may adjourn for that purpose, or may record a special decision with respect to such plea, and proceed with the trial.

(A) *May offer a special plea to the general jurisdiction of the Court.*—A plea to the general jurisdiction, that is to the right of the court generally, to try the prisoner on any charge at all, is here kept distinct from any plea which relates only to the particular charge on which the prisoner is brought before the court. Under the former he may plead, for example, that the court is improperly constituted, either in respect of the rank or number of the members, or that he is not amenable to the court, either as not being subject to military law or not subject to that description of court; as, for instance, in the case of a warrant officer being brought before a regimental court-martial. See above, note on Rule 23.

A plea relating to the particular charge, and relating to some matter which might formerly be raised by a plea in bar of trial—such as previous conviction or acquittal, summary punishment by the commanding officer (Army Act, s. 46 (7), pardon of the offence or its condonation by the deliberate act of some superior authority, or the lapse of more than three years since the date of the offence (Army Act, s. 161), will be raised by way of defence in the ordinary way, and not by way of plea in bar of trial.

Evidence, when necessary, is heard in support of a plea to the jurisdiction, and if taken, must be taken on oath, like the evidence of other witnesses.

(B) The confirmation of the finding, after a plea to the jurisdiction is overruled, will, without any special mention, necessarily have the effect of confirming the decision of the court overruling the plea. If, on the other hand, the confirming officer thinks that the plea to the jurisdiction, although it was overruled, is valid, he must refuse to confirm the finding of the court; but inasmuch as the court must in that case be considered as having had no jurisdiction to try the prisoner, the prisoner, in strict law, will not have been tried at all, and can, therefore, still be tried for the alleged offence.

(C) If the court allow the plea, the convening officer cannot overrule the finding, inasmuch as to do so would be to compel the court to try the prisoner, and thus render its members liable to a possible action for damages (see M.M.L., chapter VIII, para. 40) after the expression of their own opinion that they had no jurisdiction. But the convening officer may convene another court.

(D) *May record a special decision.*—This in effect transfers the question to the decision of the confirming authority, who should act merely as if the plea had been overruled. See note to (B).

35. (A) If no special plea to the general jurisdiction of the court is offered, or if such plea, being offered, is overruled, the prisoner's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or the other, a plea of "Not guilty")—shall be recorded on each charge.

General plea of "Guilty" or "Not guilty."

(B) Before recording a plea of "Guilty" the court should ascertain that the prisoner understands the nature of the charge to which he has pleaded "Guilty," and should inform him of the general effect of that plea, and in particular of the difference in the procedure which will be made by that plea.

(A) *Plead intelligibly.*—If the prisoner pleads in some language not understood by the court, or inarticulately, he will not plead intelligibly, and a plea of not guilty will be entered.

(B) *Understands the nature of the charge.*—This direction is to prevent the prisoner pleading guilty under a misapprehension. For instance, a man charged with wilfully damaging his arms may, under a misapprehension, plead guilty, because the arms have been actually damaged, though not wilfully. In such a case it must be explained to him that if he did not do it wilfully, he must plead not guilty. So, again, on a charge for desertion, the plea "Guilty, but I intended to return" amounts to a plea of "Not guilty," as the intention not to return is (except as mentioned in chapter I, para. 16) an essential element in the offence of desertion (see note to Rule 36 (A)).

A plea of "Guilty" is only to be taken to the extent to which it is pleaded. Thus a man arraigned upon a charge of losing by neglect a number of articles, who pleads guilty in respect of some of these articles only, must be taken to have pleaded "Not guilty," as regards the remaining articles. A prisoner arraigned upon a charge of receiving property knowing it to have been stolen, who pleads guilty "except that he did not know it was stolen" must be dealt with as having pleaded not guilty. So as regards any act of which the intention is an element, where the prisoner pleads guilty, but says that he "did not intend to do it," or words to that effect.

Difference in the procedure.—This is shown by Rule 36. Under that rule, in the case of a regimental court-martial, the court will cause some at least of the witnesses to be called, and the prisoner will be at liberty to cross-examine them with a view to the extenuation of the offence; but in the case of a regimental as well as a general or district court-martial the prisoner, though able to call witnesses as to character, cannot call them in extenuation of the offence, except by leave of the court under Rule 36 (F) to prove what he alleges in mitigation of punishment. Consequently if he wishes, in the case of a general or district court-martial, though admitting the offence, to show extenuating circumstances, he must plead not guilty, and cross-examine the witnesses for the prosecution, or call witnesses on his own behalf to prove the extenuating circumstances, and this will be the safest course for him even in the case of a regimental court-martial. See chapter III, para. 53.

It must be recollected, that there is nothing untrue in a prisoner pleading not guilty, even though he committed the offence, as the plea merely amounts to an expression of desire to have a formal trial.

For example, if a man admits that he struck his non-commissioned officer, but wishes to show that it was done under circumstances of very great provocation, and does not therefore deserve severe punishment, he must plead not guilty; as if he pleads guilty he will not be able, either by cross-examination of the prosecutor's witnesses or by calling witnesses on his own behalf,

to show the existence of such provocation, save as above mentioned under Rule 36 (F).

36. (A) If the plea of "Guilty" is recorded on a charge, the court before the finding shall receive any statement which the prisoner desires to make in reference to the charge, and if from such statement or otherwise it appears to the court that the prisoner did not understand the effect of his plea of guilty, the court shall alter the record and enter a plea of not guilty, and proceed with the trial accordingly, but if the plea of guilty is not so altered, the court will find the prisoner guilty on the said charge. The court should receive the said statement and record the said finding when the findings on the other charges in the same charge-sheet are recorded. Procedure after plea of "Guilty."

(B) If there are other charges in the same charge-sheet to which the plea recorded is "Not guilty," the trial will proceed with respect to those other charges, but if the other charges are alternative charges, the court may proceed with respect to all the charges as if he had not pleaded guilty to any charge, or may, instead of trying them, enter a finding of "Not guilty" on each alternative charge to which the prisoner has not pleaded guilty.

(C) If a plea of "Guilty" is recorded, and the trial does not proceed on any other charges, a general or district court-martial, after recording the finding on the plea of "Guilty," should read the summary of evidence, or abstract of evidence, and annex it to the proceedings, and if there is no summary or abstract of evidence should proceed as directed by (E).

(D) After the summary or abstract of evidence is read, the prisoner may call witnesses as to his character, and may make a statement in mitigation of punishment, but no other address will be allowed.

(E) If a plea of "Guilty" is recorded and the trial does not proceed on any other charges, a regimental court-martial, after recording the finding on the plea of "Guilty," should take and record sufficient evidence to enable them to determine the sentence, and the confirming officer to know all the circumstances connected with the offence. This evidence will be taken in like manner as is directed by these rules in the case of a plea of "Not guilty." The prisoner may call witnesses as to his character, and may make a statement in mitigation of punishment, but no other address will be allowed.

(F) When the prisoner at any court-martial (general, district, or regimental) states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the prisoner to call witnesses to prove the same.

(A.M.L.)

2 E

(A) *Any statement.*—This statement may in many cases show that the prisoner did not understand the effect of his plea of "Guilty." For instance, if on a charge of wilfully damaging his arms he explains how the damage was caused, and says he did not intend to do it, that statement shows that he intended to plead "Not guilty." Or if, on a charge for desertion, he pleads "Guilty," a statement showing that he intended to return shows that he intended to plead "Not guilty" to the charge for desertion, and only to admit absence without leave. (See notes to Rule 35.) Or, again, if he alleges very great provocation for the offence, it may be desirable to record a plea of "Not guilty" in order to allow the existence of such provocation to be proved in the ordinary way.

If a court fail to observe this rule and treat such a plea as above mentioned in the case of desertion as a plea of "Guilty," the confirming officer should refuse confirmation; he can then order a new trial. See ss. 54 (6), 157, and notes; Q.R., 1885, Scct. VI, para. 107. If he confirms, the whole proceedings are nevertheless invalid. See note to Rule 55 (B).

In the case of a plea of "Guilty," the prisoner will always be asked whether he has any witnesses to call as to character, see (D).

For Form see Appendix II, Form of Proceedings, para. (4), p. 518.

(B) For instance, in the illustration of charge in Appendix I, p. 491, the charges are not alternative, and therefore if the prisoner pleads guilty to one charge and not guilty to the other charge the court should proceed to try him on the remaining charge. In the case of alternative charges a man cannot be guilty of all of them. For example, in Form 58, p. 504, he cannot have committed the offence of making away with, and also of losing by neglect, the same articles of his regimental necessaries. If, therefore, he pleads guilty to one charge, the court should usually enter a finding of not guilty on the other, as inconsistent with the one to which he has pleaded guilty; but if the summary of evidence shows clearly that he made away with, and he pleads guilty only to losing by neglect, the articles, the court should try him for the making away with his necessaries, inasmuch as it is a more serious offence than losing by neglect, and a soldier ought not by pleading guilty to the smaller offence to escape punishment for the greater.

(C) and (D) It will be observed that the prisoner cannot (except by permission of the court under (F)) call witnesses in extenuation of the offence and consequent mitigation of punishment, nor can he cross-examine the witnesses for the prosecution either in extenuation or as to character.

(E) A finding on a plea of "Guilty" may be recorded either in open or closed court. The consequence of this paragraph is that the prisoner can cross-examine the witness both in extenuation of the offence with a view to the mitigation of punishment, and as to character, but he cannot call witnesses to prove extenuating circumstances. See Rule 38, and for Form, see Appendix II, Form of Proceedings, paras. (4) and (5), pp. 518, 519.

(F) The court should always, if the prisoner requests it, allow witnesses to be called, to prove any statement made by him in mitigation of punishment.

Withdrawal
of plea of

37. The prisoner may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty," and

plead "Guilty," and in such case the court will at once, "Not subject to a compliance with Rule 35 (B). record a plea of guilty." "Guilty," and shall, so far as is necessary, proceed in manner directed by Rule 36.

If the prisoner proposes to withdraw his plea of not guilty, the court must inform him of the general effect of his withdrawal, and of the difference in the procedure, in the same manner as if he pleaded guilty under Rule 35.

38. After the plea of "Not guilty" to any charge is recorded, the trial will proceed as follows:—

Plea of "Not guilty" and case for the prosecution.

(A) The prosecutor may, if he desires, make an opening address.

(B) The evidence for the prosecution shall then be taken.

(C) If it should be necessary for the prosecutor to give evidence for the prosecution, he should give it after the delivery of his address, and he must be sworn, and give his evidence in detail.

(D) He may be cross-examined by the prisoner, and afterwards may make any statement which might be made by a witness on re-examination.

For Form see Appendix II, Form of Proceedings, para. (5), p. 519.

(A) In cases of any complication, such as cases of embezzlement, the prosecutor should always make an opening address for the purpose of explaining the charge, and enabling the court better to follow the evidence. This is the only object of the address. As a rule the address of the prosecutor should be in writing. See further Rule 59, and note.

(B) As to the evidence, see Rules 79 to 84. The evidence will be taken by question and answer, Rule 81.

Respecting the duty of the president, see Rule 58 and note.

(C) The prosecutor should never himself give evidence unless it be to prove a date or other formal matter, or produce documents; but even formal matters should not be left to be proved by him, if it can possibly be helped. The production of documents which are in his possession is not open to the same objection.

The only possible exception to the rule of the prosecutor not giving evidence will be occasionally on active service, where the trial cannot be postponed, and the same officer is a material witness and also the only available officer for the duty of prosecutor. In these exceptional cases, it is essential that his sworn statements as a witness should be kept quite distinct from his statements made as prosecutor. Consequently he must give his evidence before any other witness, and in detail, and must not, after delivering an address, be allowed to swear generally to the statements contained in it.

Documentary evidence will be read by the judge-advocate, or by the president, or by some member of the court, and will be entered on the proceedings.

When counsel appears on behalf of the prosecutor, (C) and (D) do not apply. See Rule 87 (D).

(A.M.L.)

Close of case
for the prosecution
and procedure
for defence
where
prisoner does
not call
witnesses.

39. (1) At the close of the evidence for the prosecution, the prisoner will be asked if he intends to call any witnesses other than witnesses as to character.

(2) If the prisoner does not state that he intends to call any witnesses other than witnesses as to character, the procedure will be as follows :—

- (A) The prosecutor may address the court a second time, for the purpose of summing-up the evidence for the prosecution.
- (B) The prisoner will be asked if he has anything to say in his defence, and may address the court in his defence.
- (C) The prisoner may call witnesses as to his character.
- (D) The prosecutor may produce in reply to the witnesses as to character, proof of former convictions and entries in the defaulters' book, but he may not again address the court.

(1) The question to the prisoner as to the calling of witnesses will be put by the judge-advocate, or, if there is none, by the president. The court, in asking the prisoner as to his witnesses, must inform him of the difference between witnesses in general, and witnesses as to character only, and in particular must explain, that if he wishes to produce any evidence in extenuation of the offence with a view to the mitigation of punishment, he will not be able to do so if he only calls witnesses as to character. For Form see App. II, Form of Proceedings, para. (6), p. 522.

(2) (A) The observations with respect to the opening address of the prosecutor (see note to Rule 59 (A)), apply equally to his second address. In summing-up the evidence the prosecutor must confine his remarks to the evidence. He must not keep back or gloss over any of its weak points, and in fact should under-state rather than over-state that view of the facts which it is his duty to bring before the court on behalf of the prosecution; still less must he state any new fact relating to the case which has not been given in evidence. Any deviation in these respects on the part of the prosecution, or any want of moderation may lead to the proceedings being invalidated. The prisoner on the other hand, has the privilege of making statements unsupported by evidence, and when those statements are made of his own knowledge they must be dealt with as evidence, although not given on oath. See note to Rule 42 (A).

(D) This evidence can only be adduced before the finding, in cases where the prisoner calls witnesses as to character, or obtains from the prosecutor's witnesses evidence of his good character.

Defence
where
prisoner calls
witnesses.

40. If the prisoner states that he intends to call witnesses other than witnesses as to character, the procedure will be as follows :—

- (A) The prisoner will be asked if he has anything to say in his defence, and may address the court in his defence.

- (b) The prisoner may call his witnesses, including witnesses as to character.
- (c) After the evidence of all the witnesses for the defence has been taken, the prisoner may again address the court, and the time at which such second address is allowed is in these rules referred to as the time for the second address of the prisoner.
- (d) The prosecutor will be entitled to address the court in reply.

For Form see Appendix II, Form of Proceedings, para. (7), p. 523.

(A) The utmost liberty consistent with the interest of parties not before the court, and with the dignity of the court itself, should be allowed to the prisoner in making his defence (see Rule 59 (C)); and the court should, if necessary, adjourn to allow him time for its preparation. As to friend of prisoner and counsel, see Rules 85-92.

41. (A) The judge-advocate, if any, will, unless he and the court think a summing-up unnecessary, sum up in open court the whole case to the court. Summing-up by judge-advocate.

(B) After the judge-advocate has spoken, no other address shall be allowed.

(A) The summing-up of the judge-advocate ought, like that of a judge to a jury, to be perfectly impartial. See Rule 101 (D), (G), (H). In simple cases a summing-up is unnecessary; but even where the facts are simple, difficult questions may sometimes arise as to the particular offence which the acts constitute in law, and in that case the judge-advocate should give his opinion on the legal point. The judge-advocate has, it will be observed, a right to sum-up whenever he considers a summing-up necessary. The summing-up need not be in writing.

If the summing-up is unnecessary, an entry to that effect must be made in the proceedings. See Appendix II, Form of Proceedings, para. (7), p. 526.

Finding and Sentence.

42. (A) The court will deliberate on their finding in closed court. Consideration of finding.

(B) The opinion of each member of the court will be taken separately on each charge.

(A) *Closed court.*—See Rule 62.

The president may commence the deliberation on the finding by a statement of the questions to be considered, and the order in which they are to be considered, and the bearing of the evidence on those questions, and other members of the court may comment on the evidence, and the truth or otherwise of the defence.

The great points for all the members to keep before their minds are (1) that according to one of the fundamental maxims

of English law, a man is to be presumed innocent till he is proved guilty, and (2) that they have to find *according to the facts proved in evidence*; and to this end they must carefully separate mere statements made by the prosecutor or prisoner from facts proved by the respective witnesses. Some weight may, however, be allowed to a statement of the prisoner, which is corroborated incidentally or otherwise by evidence, especially if he has been unable to procure a witness who might have given evidence on the point.

Where the proceedings are voluminous, the judge-advocate should be prepared with such notes as may assist the members in referring to any particular part of the evidence. He will not offer any opinion except on legal points. (See Rule 101.)

It is competent to the court, if they think fit (see Rule 84 (D)), to call or recall a witness for the purpose of putting any question deemed essential; but any such witness must be examined in the presence of the parties, and all questions put to him, whether by a member of the court, the prosecutor, or prisoner, will be put through the president.

(B) As to taking opinions, see Rule 68, and note.

The opinions will be taken separately on each charge, and the court, if they think that the offence stated in any charge is not proved, must acquit the prisoner on that charge, irrespective of any other charge; but where the charges are *alternative*, the conviction under one necessarily involves an acquittal under the other charges, as, for instance, in the example in Form 58, among the further illustrations of charges, p. 504. If the prisoner is convicted under the first charge of having made away with certain articles of his regimental necessaries, he is necessarily acquitted of having lost them by neglect.

Form and
record of
finding.

43. (A) The finding on every charge will be recorded, and except as mentioned in these rules, will be recorded simply as a finding of "guilty," or of "not guilty," or of "not guilty and honourably acquit him of the same."

(B) Where the court are of opinion as regards any charge that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the prisoner in his defence, they may, instead of a finding of "not guilty," record a special finding.

(C) The special finding may find the prisoner guilty on a charge, subject to the statement of exceptions or variations annexed to the finding.

(D) Where the court are of opinion as regards any charge that the facts proved do not disclose an offence under the Army Act, 1881, the court will acquit the prisoner of that charge.

(E) If the court doubt as regards any charge whether the facts proved show the prisoner to be guilty or not of an offence under the Army Act, 1881, they may, before recording a finding on that charge, refer to the confirming

authority for an opinion, and, if necessary, adjourn for that purpose.

(F) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of "not guilty" on that charge; but if the court think that the facts so proved constitute one of the offences stated in two or more of the alternative charges, but doubt which of those offences the facts do at law constitute, then they may, either before recording a finding on those charges refer to the confirming authority for an opinion, and, if necessary, adjourn for the purpose, or they may record a special finding, stating the facts which they find to be proved, and stating that they doubt whether those facts constitute in law the offence in such one or another of the alternative charges as are specified in the finding.

(A) For Form see Appendix II, Form of Proceedings, paras. (8) and (9), pp. 526, 527. Under s. 54 (3) of the Army Act, an acquittal on a charge requires no confirmation. For procedure where the finding is "Not guilty" on all the charges, see Rule 44. The finding of honourable acquittal may be recorded in the case of non-commissioned officers and privates as well as of officers, but is not to be recorded as a matter of course upon an acquittal. It is incorrect to honourably acquit a prisoner on a charge not affecting his honour.

Another case in which an honourable acquittal is incorrect is thus pointed out by the Duke of Wellington (Well. Desp., vol. 5, 221-2):—

"It is difficult and needless at present to define in what cases honourable acquittal is peculiarly applicable; but it must appear to all persons to be objectionable in a case in which any part of the transaction which has been the subject of investigation before the court-martial is disgraceful to the character of the party under trial. A sentence of honourable acquittal by a court-martial should be considered by the officers and soldiers of the army as a subject of exultation, but no man can exult in the termination of any transaction a part of which has been disgraceful to him; and although such a transaction may be terminated by an honourable acquittal by a court-martial, it cannot be mentioned to the party without offence, or without exciting feelings of disgust in others; these are not the feelings which ought to be excited by the recollection and mention of a sentence of honourable acquittal."

(B) For Form of special finding, see Appendix II, Form of Proceedings, para. (8), p. 526; and for Form of Acquittal, para. (9), p. 527. In case of immaterial variation, the finding may simply be recorded as "Guilty"; as, for example, if the prisoner is found to have made away with his regimental necessaries on the 25th, and not on the 26th of August, or to have made away with two pairs of boots, and not one pair of boots, the variation is immaterial, and he may simply be found guilty of the charge.

(C) Thus, if the court find that the facts stated in the charge are only proved in part, they may find the prisoner guilty, subject

to the exceptions or variations. The facts, however, which they find to be proved, subject to the exceptions or variations, must amount to the substance of the offence actually charged, otherwise the court should acquit the prisoner. If, for example (see Form 58 among the further illustrations of charges, p. 504), they find that the prisoner made away with one brush, but not the pair of boots and the other brush, they may find the prisoner guilty, with the exception that he did not make away with the pair of boots and one brush. If, on the other hand, they find from the evidence that he did not make away with a pair of boots or two brushes, but did make away with other regimental necessities, they must acquit the prisoner; or if they find that he lost the articles aforesaid, but did not make away with them by sale or otherwise, they must acquit him of the charge of making away with them. So again if he is charged with being absent without leave, and the particulars specify an absence from the 20th to the 30th of June, and the evidence prove an absence from the 21st to the 30th of June, the court may find the prisoner guilty with the variation of the 21st for the 20th. But if the evidence proves an absence from the 20th to the 30th of July, the difference is so material as to amount to a new charge, and the court must acquit the prisoner, and he can be tried on the new charge for the absence in July. See Rule 11 (D) note.

(D) If, for example, a man is charged with an act of a fraudulent character in taking money from a man under his command, and refusing to return it, and the court are of opinion that the acts which he did were not fraudulent, they must acquit him, inasmuch as the act of taking money and refusing to return it, if not fraudulent, would not amount to an offence.

(E) This paragraph provides that, where the court doubt as to whether the facts proved constitute in law the offence charged, the court may refer to the confirming authority. For instance, if they find that the prisoner took certain sums of money, but doubt whether the circumstances under which he took them do or not constitute embezzlement, or an offence of a fraudulent character, they may state the facts which they find proved, and refer to the confirming authority for an opinion as to whether they constitute the offence. The court, however, cannot refer to the confirming authority for any opinion as to the facts, but merely as to the legal results to which those facts amount.

(F) The special findings before mentioned relate only to the *particulars* in the charge. A special finding can in no case (except under s. 56 of the Army Act as mentioned below) alter the statement of the offence in the charge; but under this paragraph, if there are alternative charges, and the court doubt whether the facts proved amount in law to one charge or the other, and they do not think it advisable to refer to the confirming authority for an opinion, they can record a special finding, and thus leave it to the confirming authority under Rule 54 (A) to determine whether the facts found by the court constitute in law the one offence or the other. For example, if on a charge for insubordinate language, they find that the prisoner used the language charged, but doubt whether the language is each or was used under such circumstances as to be in law an offence within section 8 of the Army Act, they may record a special finding, setting out the language they find to be used, and the officer to whom, or the circumstances under which, it was used, and state that they doubt whether the use of the language under the circumstances is insubordinate or not. The confirming authority

will then decide, under Rule 54 (A), whether such a finding amounts to a conviction on the second or third charge.

The only other description of special finding which affects the statement of the offence is one not mentioned in the rules, but allowed by the Army Act (s. 56). That section enables a prisoner charged with an offence mentioned in the first column of the following table, to be found guilty of the offence of a similar character mentioned opposite to that offence in the second column of the table, where the evidence shows that the latter offence, and not the precise offence charged, has been in fact committed.

TABLE.

A Prisoner charged with	May be found guilty of
(a) Stealing money or property.	Embezzlement, or fraudulently misapplying money or property.
(b) Embezzlement...	Stealing, or fraudulently misapplying money or property.
(c) Desertion ...	Attempting to desert, or being absent without leave.
(d) Attempting to desert...	Desertion, or of being absent without leave.
(e) An offence committed under circumstances involving a higher degree of punishment.	The same offence as being committed under circumstances involving a less degree of punishment.

For illustration of table, see note to s. 56 of Army Act.

44. (A) If the finding on each of the charges in a charge-sheet is "Not guilty," the president will date and sign the proceedings, the findings will be announced in open court, and the prisoner will be released in respect of those charges. Procedure on acquittal.

(B) The proceedings shall then, upon being signed by the judge-advocate (if any), be transmitted at once in like manner as is directed by these rules in the case where the findings require confirmation.

(A) *Announced in open court.*—This is required by Army Act s. 54 (3).

For Forms see Appendix II, Form of Proceedings, para. (9), p. 527.

In respect of those charges.—Consequently the prisoner may be kept in custody and tried on the charges of any other charge sheet, or on any other charge which is in course of investigation by his commanding officer.

(B) See Rules 49 and 95.

45. (A) If the finding on any charge is "Guilty," then, Procedure on conviction. for the guidance of the court in determining their sentence, and of the confirming authority in considering the sentence, the court, before deliberating on their sentence, may take evidence of and record the prisoner's character, age, service, and rank, and the length of time he has been in arrest or in confinement on any previous sentence, and any deferred pay, military decoration, or military reward, of which he

may be in possession or to which he is entitled, and which the court can sentence him to forfeit.

(B) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regimental books respecting that prisoner, and identifying the prisoner as the person referred to in that summary.

(C) Evidence on the part of the prosecutor upon the above matters should not be given by a member of the court.

(D) The prisoner may cross-examine any such witness, and may call witnesses to rebut such evidence; and if the prisoner so requests, the regimental books, or a duly certified copy of the material entries therein, shall be produced; and if the prisoner alleges that the summary is in any respect not in accordance with the regimental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if they find it is not in accordance therewith, shall cause the summary to be corrected accordingly.

(A) For Form see Appendix II, Form of Proceedings, para. (10), p. 527.

The court will always take evidence as to character, unless the circumstances render it impracticable so to do, in which case they will record the reasons for such impracticability in the proceedings.

It must be recollected that it is not competent for the court to take verbal evidence of the prisoner being a *bad* character. The badness of his character must be proved by former convictions and entries in the defaulters' book, and not by the expression of any opinion to that effect by witnesses, although such opinion is admissible as evidence of *good* character. However, if the prisoner calls evidence of good character, the prosecutor may cross-examine those witnesses, with a view to test their veracity, and thereby indirectly bring out evidence of bad character.

Witnesses in favour of a prisoner's character will be called, as a rule, either as part of his defence, or after his address and before the finding; but under this rule (D) may be called to rebut the evidence given by the prosecutor after the finding.

In cases of alleged desertion, the fact of the prisoner having surrendered or been apprehended should not be left until after the finding; it is one of the material facts of the case, and as such ought to be proved by the prosecutor; it may have some bearing on the question of whether the prisoner intended or not to return.

The court will not, when the prisoner belongs to the regular forces, take evidence of any conviction while he was a civilian. But convictions by a civil court while the prisoner is a soldier may be given in evidence, although the offence was committed while he was in a state of absence or desertion. (Q.R., 1885, Sect. VI, para. 71.)

Evidence of expenses, loss, damage, or destruction will be taken in the course of the trial, as Rule 11 (F) provides that the facts justifying any deduction from pay are to be stated in the

particulars. In case such evidence has not been taken, there is nothing to prevent the court taking it after the finding if necessary.

If two or more prisoners are convicted of a joint offence, each of them may be ordered to pay the whole amount of the compensation for any expenses, loss, damage, or destruction occasioned by that offence. Each of them is liable to pay the whole compensation in default of the other. If both contribute to the payment, proviso (b) to s. 138 of the Army Act (see note) will prevent either of them being charged with an undue amount, as that proviso forbids deductions more than sufficient to make good the compensation.

"*Military decoration*" is defined by the Army Act, s. 190 (18), to mean any medal, clasp, good conduct badge, or decoration; and "*military reward*" is defined (s. 190 (19)) to mean any gratuity or annuity, for long service or good conduct, and also to include any good conduct pay or pension, or any other military pecuniary reward.

Can sentence him to forfeit.—See Army Act, s. 44 (11), (12). The court cannot take evidence with respect to any decoration of which the court cannot order the forfeiture, as, for example, the Companionship of the Bath. The object of taking this evidence and evidence of the rank of the prisoner is for the purpose of enabling the sentence to be awarded correctly. See Rule 46.

(B) *Regimental books.*—A statement containing a summary of the entries to the prisoner's name in those books, with a statement as to his age, service, rank, &c., is to be produced, and verified by a witness as being correctly extracted from the regimental books; a witness must also identify the prisoner as being the person referred to in such statement. This witness should usually be the adjutant or some other officer. If the prisoner challenges the correctness of the statement, the regimental books, or a duly certified copy thereof, must be produced, and the court must compare the statement with the books. See (D).

(D) *Duly certified copy.*—This means a copy certified, as provided by the Army Act, s. 163 (h), by the officer having custody of the book.

Any previous convictions of the prisoner may be proved by the production of a verbatim extract from the regimental books, certified by the officer in charge of those books (Army Act, s. 163 (g), Q.R., 1885, Sect. XXII, para. 52). But a conviction by a civil court may be proved by the production of a certificate (Army Act, s. 164) of the conviction, and must be so proved if there is reason to doubt the correctness of the entry of the conviction in the regimental books. A witness must always be called to prove the identity of the prisoner with the person stated in the extract or certificate to have been convicted.

The witness producing the above statement and schedule and identifying the prisoner should be the adjutant or some other officer, and the witness may be cross-examined by the prisoner.

46. Where the court desire to sentence an officer to forfeit seniority of rank, they may sentence him to take rank and precedence in his corps, or in the army, or in both, as if his appointment to the rank or ranks held by him, and specified in the sentence, bore the date of some day or days specified in the sentence, and later than the actual date of his said appointment.

Mode of
forfeiting
seniority of
rank of
officer.

See Army Act, s. 44*f*, and Rule 45.

Under this rule an officer whose commission as captain was dated on the 1st of January, 1878, may be sentenced to take rank in the army and in his regiment as if his commission bore date the 1st of March, 1880. If, for instance, it is wished to reduce a captain to the bottom of the list in his regiment he may be sentenced to take rank and precedence in his regiment and in the army as if his commission bore date on the day which is specified in the sentence, and which is the next day to the date of the commission of the junior captain of the regiment. If his rank in the army differs from that in his regiment the sentence may apply to the former only. See Appendix II, Form of Proceedings, para. 10, p. 530.

Sentence.

47. The court shall award one sentence in respect of all the offences of which the prisoner is found guilty, and such sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.

For Form see Appendix II, Form of Proceedings, para. (10), p. 530.

The court will award such sentence as they think the prisoner ought to suffer, and the judge-advocate or president will enter it at once in the proceedings. For observations on the duty of the court in awarding sentence, see chapter III, paras. 78-88.

The object of the latter portion of this rule is to prevent legal objections to the sentence. If, for example, the prisoner has been convicted on a charge of having made away with his regimental necessaries, which can only be punished with imprisonment, and also on a charge of desertion on active service or after a previous conviction, which is punishable with penal servitude, the court may pass a sentence of penal servitude, and that sentence will, under this rule, be valid because justified by the second charge, although not justified by the first charge. (See also Rules 53 and 54.) Assume that a prisoner charged with striking his superior officer and also with desertion is tried and found guilty of both charges, and sentenced to penal servitude for seven years. This rule directs that such sentence shall be deemed to have been given in respect of the second charge, which carries penal servitude as a punishment, and not in respect of the first charge, which carries only imprisonment as a punishment. But assuming that the first charge had carried penal servitude, as it would have done if the prisoner had been on active service, then the sentence would have been deemed to have been given in respect of both charges, and not in respect of the last only. This rule will apply whether the charges on which the prisoner has been tried are in one charge-sheet or in several charge-sheets.

With respect to the opinions on the sentence, see Rule 68 and the note thereon.

The sentence must, of course, be authorised by the Army Act (see s. 44); and the court cannot, for example, sentence a prisoner to restore stolen property; though an order for restoring property found in his possession may, under s. 75 of the Army Act, be made by the confirming authority or Commander-in-Chief.

48. (A) If the court make a recommendation to mercy they shall give their reasons for such recommendation. Recommendation to mercy.

(B) If the court recommend any restoration of service under section 79 of the Army Act, 1881, the recommendation, with the reasons for it, shall be entered in the proceedings.

(C) The number of votes by which a recommendation mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

(A) A recommendation to mercy will be appended to the sentence, and be embodied in the proceedings before they are signed by the president. See Army Act, s. 53 (9), and note.

For Form see Appendix II, Form of Proceedings, para. (10), p. 532.

49. Upon the court awarding the sentence, the president shall date and sign the sentence, and such signature shall authenticate the whole of the proceedings, and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation. Signing and transmission of proceedings.

For Form see Appendix II, Form of Proceedings, para. (10), p. 533; and see Rule 95.

It is essential that the sentence be signed by the president, as under the Army Act, s. 68, the term of penal servitude or imprisonment commences on the day on which the sentence and proceedings were signed by the president. His signature after the sentence will authenticate all the proceedings of the trial.

The judge-advocate (if any) will sign after the president.

As a rule, certified copies of original documents produced in evidence by the prosecutor, and not the originals themselves, will be annexed to the proceedings. Q.R., 1885, Sect. VI, para. 98.

Confirmation and Revision.

50. (A) In the case of a finding which does not require confirmation the confirming officer shall not make any remarks in the proceedings, but if he thinks that anything in the case requires further attention he shall report it to superior authority as directed by Her Majesty's regulations. Procedure of confirming officer.

(B) In the case of findings or sentences which require confirmation the confirming authority—

- (1) May direct the re-assembly of the court for revision of the finding or sentence, or either of them, stating the reasons for such revision; and
- (2) Upon receiving the proceedings, whether original or revised, may confirm or refuse confirmation, and may add any remarks on the case which such authority may think fit, and such confirmation and remarks shall be entered in and form part of the proceedings.

(A) As to remarks by confirming officer, see Q.R., 1885, Sect. VI, para. 106.

(B) The confirming authority can send back a finding and sentence, or either of them, for revision once, but not more than once; and where the finding only is sent back for revision, the court have power, without any direction, to revise the sentence also (Army Act, s. 51 (2), Rule 51 (B)).

A finding of insanity, in which case there is no sentence, may be sent back for revision.

A confirming officer cannot send back a part of a finding or sentence for revision; if he thinks that part only requires revision on account of invalidity or otherwise, he should return the whole, pointing out the part which he considers to require revision.

As under the Army Act, s. 51 (2) the confirming authority cannot recommend the increase of a sentence, nor can the court on revision for any reason increase the sentence previously awarded, the object of revision will be mainly either to cure defects in the proceedings of the court where the prisoner has been found guilty, or to give the court an opportunity of acquitting or passing a more lenient sentence on the prisoner. If, however, the sentence is wholly illegal (see Rule 55 (A) and note), it is null, and the court on revision have the same power of sentence as if they had passed no sentence at all; as, for example, if a regimental court sentenced a soldier to be discharged with ignominy, or a court sentenced a serjeant to be reduced to the rank of lance-corporal, and the confirming officer sent back the sentence for revision as being null, the court might pass a sentence of imprisonment or dismissal from the service.

See generally as to the duty of a confirming officer where the proceedings are illegal or irregular, Q.R., 1885, Sect. VI, para. 107.

Confirmation should be effected simply by the word "confirmed"; the word "approved" should not be added. Any remarks, whether of approval, disapproval, or otherwise, should be added after the confirmation and be separate from it, see Form in Appendix II, Form of Proceedings, para. (12), p. 534. In some cases they must be in a separate document. Q.R., 1885, Sect. VI, paras. 105, 106.

Original or revised.—"Original" here means the proceedings of the court where no revision has taken place, whether from the finding or sentence not having been sent back for revision, or from a revision not having taken place, in consequence of the dissolution of the court as mentioned in the note to Rule 51. "Revised" means the proceedings after the court have re-assembled for revision.

The confirming officer can always withhold confirmation wholly or partly, and refer to superior authority (Army Act, s. 54 (5), and he must so refer if he has been a member of the court-martial (s. 54 (4)).

Revision.

51. (A) Where the finding or sentence is sent back for revision, the court should re-assemble in closed court, and shall not receive any further evidence.

(B) Where the finding is sent back for revision, and the court do not adhere to their former finding, they shall revoke the finding and sentence, and record a new finding, and, if such new finding involves a sentence, pass sentence afresh.

(c) Where the sentence alone is sent back for revision, the court shall not revise the finding.

(d) After revision the president shall date and sign the decision of the court, and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.

(A) *Closed court*, see Rule 62. The court should re-assemble at the time mentioned in orders, which should be as soon as practicable.

As the court cannot receive any further evidence whatever Army Act, s. 54 (2), they cannot hear any further address for either the prosecution or the defence.

When the court is assembled for revision it is technically the same court. Consequently, if it is reduced by death, inability to attend, or otherwise, below the legal minimum (see notes to Rules 16-19), it is dissolved, and cannot re-assemble for revision, and the proceedings must be returned without any entry thereon to the confirming authority. Or, again, if the president is dead or unable to attend, a new president, if the senior member of the court is of sufficient rank, must be appointed by the convening authority. See s. 53 (2) of the Army Act.

(B) Where the finding is sent back for revision and the court adhere to the finding, they can nevertheless revise the sentence. See Army Act, s. 54 (2) and note to last rule.

If such new finding involves a sentence.—If the finding was insanity, or was an acquittal, no sentence will be involved. For Form see Appendix II, Form of Proceedings, para. (11), p. 533.

(D) For Form see Appendix II, Form of Proceedings, para. (11), p. 533. See Rule 95. Q.R., 1885, Sect. VI, paras. 108, 110-112.

52. The charge, finding, sentence, and confirmation of a Promulgation. court-martial shall be promulgated in such manner as the confirming authority may direct; and if no direction is given, according to the custom of the service.

As to promulgation, see Q.R., 1885, Sect. VI, para. 109.

The finding of acquittal on all charges is directed by the Army Act, s. 54 (3), to be pronounced at once in open court. No further promulgation is required. The charge, finding, sentence, and confirmation in every other case must, under this rule, be promulgated. Consequently, if the finding on some of the charges is acquittal, and on others conviction, the finding of acquittal must be promulgated, together with the finding of conviction; and a finding of conviction, though not confirmed, will still be promulgated.

In the absence of any direction by the confirming authority, the usual custom of the service will be followed, but a written notice to the prisoner of the charge, finding, sentence, and confirmation will be sufficient promulgation to satisfy this rule.

As to the execution of sentence, see chapter III, paras. 100-3, and generally as to the disposal of prisoners, Q.R., 1885, Sect. VI, 151, *et seq.*

Under the Army Act, s. 53 (9), a recommendation to mercy must be promulgated and communicated to the prisoner, together with the finding and sentence. The confirming officer may direct

observations recorded by him to be promulgated, either with the proceedings, or as he may think most desirable. Q.R., 1885, Sect. VI, paras. 105, 106.

If the sentence of a prisoner to penal servitude or imprisonment is confirmed, then, in default of any committal by superior authority, the commanding officer of the prisoner, as soon as may be after the promulgation of the sentence, will commit the prisoner to some prison in accordance with any general or special instructions he has received from superior authority. Q.R., 1885, Sect. VI, paras. 157, 164. As to commitment abroad, paras. 158, 165.

Mitigation
of sentence
on partial
confirmation.

53. (A) Where a sentence has been awarded by court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of such charges, that authority shall take into consideration the fact of such non-confirmation, and shall, if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges the findings on which are confirmed.

(B) Where a sentence has been awarded by a court-martial in respect of offences in several charges and has been confirmed, and any one of such charges or the finding thereon is found to be invalid, the authority having power to remit or commute the punishment awarded by such sentence shall take into consideration the fact of such invalidity, and if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges which with the findings thereon are not invalid, and such punishment shall be as valid as if it had been originally awarded only in respect of those offences.

(C) Where a sentence passed by a court-martial has been confirmed, and is found from any reason to be invalid, the authority who would have had power to commute the punishment awarded by such sentence if it had been valid may pass a valid sentence, and the sentence so passed shall have the same effect as if passed by the court-martial, but the punishment awarded by such sentence shall not be higher in the scale of punishments than the punishment awarded by the invalid sentence, nor, in the opinion of the said authority, be in excess of the last-mentioned punishment.

(A) In the case of a man convicted on a charge of desertion after a previous conviction, and also on a charge of having made away with his regimental necessaries, and sentenced to penal servitude,—if the confirming officer confirms the finding on the second charge, but not that on the first charge, which justified the sentence of penal servitude, he is bound under this rule to mitigate the sentence to imprisonment. Otherwise the sentence would be in excess of what is justified by the finding which is confirmed, and therefore be invalid.

Again, if the second charge in the above case were striking an officer and the confirming officer refuses to confirm the finding on that charge while confirming the finding on the first charge, it will be his duty to consider whether the sentence of penal servitude is not too severe for the offence of desertion unaccompanied by aggravating circumstances, and if he thinks so, he will commute it to some less punishment. See generally, as to the duty of the confirming officer in the exercise of his powers of commutation or mitigation, Q.R., 1885, Sect. VI, para. 104.

(B) The object of this paragraph is to allow any permanent authority to do after confirmation what paragraph (A) allows to be done before confirmation, that is to say, to provide that if the Judge-Advocate-General or a court of law declares one of several charges to be invalid, the commuting authority may mitigate the sentence, so as to prevent the whole sentence being invalid, and to make it a valid sentence in respect of any other charge which is valid.

(C) This paragraph enables the commuting authority to substitute a valid sentence for a sentence found after confirmation to be invalid.

54. (A.) Where a special finding has been recorded in relation to alternative charges under Rule 43 (F), and the confirming authority is of opinion that the facts found by such special finding constitute in law the offence charged by any of such alternative charges, such authority may confirm the finding, and in that case shall declare that the finding amounts to a finding of guilty on that charge; but if it is afterwards declared by any authority having power to remit or commute the punishment awarded that the said facts constitute in law the offence charged in one of the other alternative charges, then the confirming authority, or such other authority as aforesaid, may declare that the finding amounts to a finding of guilty on that alternative charge; and the finding shall be a valid finding of guilty on the charge specified in that behalf in the declaration made on confirmation, or, in case of a subsequent declaration, in that subsequent declaration.

Confirmation
of finding on
alternative
charges.

(B) The sentence awarded in the case of any such special finding may likewise be confirmed, subject to this proviso, that if the offence in one of such alternative charges involves a higher punishment, or is otherwise graver, than the offence in the charge of which the prisoner is found to be guilty under the terms of any declaration mentioned in (A), the authority making the declaration, or some other authority having power to remit or commute the punishment awarded, shall remit or commute the punishment according as seems just, having regard to the last-mentioned offence; and such punishment shall be as valid as if it had been originally awarded in respect of the last-mentioned offence.

(A) See note to Rule 43 (F).

For Forms see Appendix II, Form of Proceedings, para. (12), pp. 533, 534. The object of this rule, as already explained in the

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note to Rule 43 (F), is to prevent a miscarriage of justice in consequence of a difference of opinion as to the offence which is legally constituted by the acts committed by the prisoner. If, in such a case, the court-martial have recorded a special finding of the facts, it remains under this rule for the confirming authority, and ultimately for any authority having power to commute the punishment, to declare what offence in law the acts committed by the prisoner constitute. So that if the opinion of the confirming officer is eventually overruled by any superior authority, the finding will take effect accordingly in respect of the charge for the offence which the acts of the prisoner are declared by the superior authority to constitute.

(B) As respects the sentence, see note to preceding rule.

Confirmation notwithstanding informality in or excess of punishment.

55. (A) If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed; and if the punishment awarded by the sentence is in excess of the punishment authorised by law, the confirming authority may vary the sentence so that the punishment shall not be in excess of the punishment authorised by law; and the confirming authority may confirm the finding and the sentence as so varied of such court-martial.

(B) Whenever it appears that a court-martial had jurisdiction to try a prisoner, and that the prisoner was charged with some offence or offences under the Army Act, 1881, and was shown by legal evidence to have been guilty of the offence or one of the offences charged, the finding in respect of the offence or offences of which he is so shown to be guilty, and the sentence, may be confirmed, and if so confirmed shall be valid, notwithstanding any deviation from these rules or any defect or objection, technical or other, unless it appears that any injustice has been done to the prisoner; but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules.

(A) The object of this paragraph is to prevent the proceedings of courts-martial being rendered invalid, when they cannot be sent back for revision without great inconvenience to the public service. It will not exonerate from blame the presidents and members of courts-martial who pass sentences which are informal, or in excess of their powers, and confirming officers will, if practicable, send the finding and sentence back for revision, and if they act under this rule, will call the attention of the court to the informality or illegality of the sentence.

Under this paragraph the confirming authority may vary the form in which a sentence is expressed, but cannot amend a sentence wholly illegal; as, for example, if an officer convicted of disgraceful conduct were sentenced to dismissal, or if a soldier were sentenced by regimental court-martial to be discharged with ignominy, or if a non-commissioned officer were sentenced to be reduced to the rank of lance-corporal, or if a soldier not on active service were sentenced to summary punishment.

In any such case the confirming officer should treat the sentence as a nullity, and direct the court to re-assemble and pass a valid sentence. This proceeding would not be a revision of the sentence, so that the law prohibiting the increase of punishment on a revision would not apply, and the sentence in the case above mentioned of the officer might be cashiering, and of the non-commissioned officer might be imprisonment or reduction to the ranks. See Rule 50 (B), and note.

Where, however, the punishment exceeds what is authorised by law, the confirming authority can, though such sentence is illegal, vary the sentence so as to bring it into conformity with law, and confirm it as varied.

(B) This paragraph will prevent a miscarriage of justice arising in consequence of defects in the procedure which do not affect the real merits of the case. These defects will usually be of a technical character, as any substantial defect, such as taking illegal evidence by accepting hearsay, or using a copy of a document where the original ought to have been produced, or calling a witness without proper notice to the prisoner, or refusing to admit evidence adduced by the prisoner, would ordinarily cause injustice to the person charged. As English law always resolves any doubt in favour of the prisoner, the court should never allow any technicality to interfere with the prisoner making his defence in the fullest manner, and while as a whole disregarding technicalities in favour of what they consider to be, in substance, fairness for the purpose of the trial, they must recollect that even a disregard of a technicality may, in some cases, cause injustice, as the object of most technical rules is to prevent injustice. Before, therefore, a confirming officer, in reliance on this rule, confirms a finding and sentence in any respect irregular, he must take care to ascertain that no injustice, however small, has been done to the prisoner; and the preferable course is, where possible, to send the case back for revision or for another trial. In every such case the confirming officer will call the attention of the officer responsible for the irregularity to the deviation from the rule, or the defect in the proceedings; as officers will be held responsible for such deviation or defect, even though under this rule the conviction of the prisoner may be upheld.

It may be convenient to note here, that if, after confirmation, the charges or the findings thereon are declared to be invalid, the trial must be treated as null, and consequently the prisoner must be relieved from all consequences of his conviction, and all record of such conviction must be erased; but in cases where the sentence alone is invalid the finding will stand good, and therefore the soldier convicted will suffer the forfeitures and other penalties which are consequential on conviction.

Where punishment is remitted, that remission, unless otherwise expressed, will not extend to forfeiture of service or good conduct pay, or to any forfeiture which he suffers by virtue of his conviction, without being sentenced to it.—Q.R., 1885, Sect. VI, para. 107.

Insanity.

53. (A) Where the court find either that the prisoner is unfit, by reason of insanity, to take his trial, or that he committed the offence with which he is charged, but was insane at the time of the commission thereof, the president (A.M.L.)

Provisions as to finding of insanity, and custody of insane person.

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shall date and sign the finding, and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.

(B) If such finding is not confirmed, the prisoner may be tried by the same or another court-martial for the offence with which he was originally charged.

(C) Where such finding is confirmed, then until the directions of Her Majesty as to the disposal of such prisoner are known, or in the case of a prisoner unfit to take his trial until any earlier time at which such prisoner is fit to take his trial, the prisoner shall be confined in such manner as may in the opinion of the proper military authority be best calculated to keep him securely without unnecessary harshness, as he is not to be considered as a criminal, but as a person labouring under a disease.

This rule supplements s. 130 of the Army Act, which requires a finding of insanity to be confirmed like any other finding. If, therefore, it is not confirmed, the trial of the prisoner must proceed in the ordinary course.

It is to be observed that two distinct cases are contemplated. A prisoner may have been sane at the time he committed the offence, but may not be sane enough to take his trial; while, on the other hand, a man insane at the time of committing the offence may have recovered sufficiently to take his trial. In the former case, if a prisoner, found not sane enough to take his trial, recovers before any directions of Her Majesty as to his disposal are known, he should be ordered for trial.

See Appendix II, Form of Proceedings, para. (9), p. 527.

General Provisions as to Proceedings of Court.

Seating of
members.

57. The members of a court-martial will take their seats according to their army rank, except that in the case of a regimental court-martial consisting entirely of officers of the same corps, they will take their seats according to their rank in that corps.

As to meaning of "corps," see Army Act, s. 190 (15).

Responsi-
bility of
president.

58. (A) The president is responsible for the trial being conducted in proper order and in accordance with the Army Act, 1881, and will take care that everything is conducted in a manner befitting a court of justice.

(B) It is the duty of the president to see that justice is administered, and that the prisoner has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a prisoner, or of his ignorance, or of his incapacity to examine or cross-examine witnesses, or otherwise.

(A) The court should always have before them a copy of the Army Act, of the Queen's Regulations, and of the Rules of Pro-

cedure, and any other official books or orders relating to courts-martial which are necessary for the purpose of its proceedings.

If any person interrupts the proceedings of the court, the best course will ordinarily be to order him to be excluded from the court. The court have, however, under the Army Act, ss. 28 and 126, statutory powers for dealing with persons who interrupt the court.

Under those sections if a person is guilty of contempt of the court by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings, the court may proceed as follows:—If such person is subject to military law, they may commit him into military custody, and either order him to be tried by another court-martial, or may order him, after hearing or giving him an opportunity to make his excuse, to be imprisoned with or without hard labour for a period not exceeding twenty-one days; and in the latter case the president may, by order under his hand, commit him to prison.

If the offender is not subject to military law, the president may certify the offence to some civil court for the purpose of obtaining his punishment by such court. Army Act, s. 126 (3), and note.

It must be recollected that the trial of a prisoner cannot proceed in his absence, even though he interrupts the proceedings.

(B) The president should, like the judge in a civil court, act as counsel for the prisoner, and he will therefore cause to be called before the court any witness, though not called either by the prosecution or the defence, whom he considers able to give material evidence to the court, and such witness may be cross-examined by the prosecutor and the prisoner. See Rule 77 (A) (B). He will also put to the witnesses any questions which appear to him necessary or desirable to elicit the truth, and will particularly take care that the prisoner does not suffer any prejudice in consequence of his inability to put proper questions to the witnesses, or in consequence of his not fully understanding the nature of the proceedings. He will examine the summary of evidence, and if a witness gives different evidence from what is there stated will cross-examine him as to the difference.

If there is a judge-advocate he has a similar duty. Rule 101 (G). The presence of a judge-advocate, however, does not relieve the president from the duty under this rule.

59. (A) It is the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the prisoner.

Power of court over address of prosecutor and prisoner.

(B) The court may stop the prosecutor in referring to any matter not relevant to the charge then before the court, or any matter which the court is not investigating, and it is the duty of the court to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor.

(C) The court should allow great latitude to the prisoner in making his defence; he must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting language towards others, but he may

for the purpose of his defence impeach the evidence and the motives of the witnesses and prosecutor, and charge other persons with blame and even criminality, subject if he does so to any liability to further proceedings to which he would otherwise be subject. The court may caution the prisoner as to the irrelevance of his defence, but should not, unless in special cases, stop his defence solely on the ground of such irrelevance.

(A) The prosecutor is an officer for securing that justice is done, not a partisan to obtain a conviction, independently of the justice of the case (see chapter III, para. 56). Therefore he should prove, either by witnesses called for the purpose, or by the examination of his other witnesses, any facts which show the true character of the offence, whether they tend to aggravate or alleviate it, or to show the innocence of the prisoner, and he must be especially careful to prove any facts tending to show either the innocence of the prisoner, or to extenuate his offence. If, for example, the prisoner is charged with insubordinate language to his superior officer, and there are circumstances of provocation which, if proved, might mitigate the punishment, though not justifying an acquittal, the prosecutor should call evidence to prove those circumstances.

Again, many acts are only offences when done knowingly or with a certain intent. *Primâ facie* it lies on the prosecution to show that the prisoner had the guilty knowledge which constitutes the offence; but absolute proof of guilty knowledge or intent is frequently impossible, and it can only be inferred from the circumstances. This inference the court is at liberty to draw, unless the prisoner produces evidence to rebut it; but in this, as in every other case, all facts which tend to show either the existence or the absence of the intent or knowledge on the part of the prisoner must be brought out by the prosecutor. For example, if the prisoner is charged with desertion, and the prosecutor is aware that though found in plain clothes, he had either received leave of absence, or leave to be in plain clothes, the prosecutor should prove that leave. So, too, if a soldier is charged with attempting to desert, and the evidence is that he went to a railway station and took a ticket for (say) Liverpool, and the fact is that several other soldiers in possession of passes took tickets for Liverpool at the same time, the latter fact should be brought out; as it gives a different complexion to the fact of taking a ticket, which of itself might be strong evidence against the prisoner.

The prosecutor must not introduce into the evidence against the prisoner any matters of aggravation which do not form part of the transaction in respect of which the prisoner is charged before the court, nor, as a rule, matters which, if true, are specific military offences with which the prisoner might be charged. If, for instance, he is charged with desertion, the prosecutor must not introduce, by way of aggravation, that he has been insolent or insubordinate, or that he had been previously drunk. On the other hand, if a soldier is charged with serious acts of insubordination, including violence to an escort, and the soldier was drunk, that fact should be brought out in the examination of the witnesses. Not only is the drunkenness part of the circumstances of the case, but it may modify the character of the offence. See chap. I, para. 31; Q.R., 1885, Sect. VI, para. 92.

If the trial is by way of appeal from the award of the commanding officer, that fact should be stated by the prosecutor. See Appendix II para. (3), p. 517.

(B) *Matter not relevant to the charge.*—What is and what is not relevant to any charge is in some cases a matter of considerable difficulty (see chap. IV, paras. 16–29); but, as there stated, in ordinary cases common sense will determine whether the matter referred to does or does not bear on the particular charge before the court.

Anything which tends to show that the prisoner committed the offence mentioned in the charge, or to show the true character of the offence (see note to (A), is ordinarily speaking, relevant.

(C) The right of the prisoner in making his defence is stated in this paragraph. If his charge against other persons of blame or criminality is made merely for the purposes of his defence, and is in any degree justified by the facts, he will not incur liability; but if his charges against others are wholly irrelevant to his defence, or if they come within the provisions of section 27 of the Army Act relating to false accusations, he is liable to be proceeded against accordingly. The court may caution him as to such liability, but should not do so, if there is any connection whatever between the charge and his line of defence. The case must be very special indeed to justify the court in stopping a prisoner in his defence, or in excluding, on the ground of irrelevancy, evidence offered by him, or to justify any further proceedings against a prisoner on account of his defence.

Where a prisoner tried for desertion made in his defence statements reflecting on the officers of the regiment as the reason for the prevalence of crime in the regiment, it was held that the defence, although the statements in it were eventually proved to be false, was not wholly irrelevant, as the prisoner might have hoped that the statements would lead to a mitigation of his punishment; and it was also held that the proper course was, not to try the prisoner again for the purpose of ascertaining the truth of his statements, but to hold a court of inquiry for that purpose.

60. Where two or more prisoners are tried together and any evidence is tendered by any one or more of the prisoners, the evidence and addresses on the part of all the prisoners will be taken before the prosecutor replies, and the prosecutor will make one address only in reply as regards all the prisoners.

Procedure on trial of prisoners together.

See note to Rule 70 (C).

61. (A.) Where the convening officer directs any charges against a prisoner to be inserted in different charge-sheets, the prisoner shall be arraigned, and until after the finding tried, upon each charge-sheet separately, and accordingly the procedure in Rules 31 to 43, both inclusive, shall, until after the finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the prisoner.

Separate charge-sheets.

(B) The trials upon the several charge-sheets shall be in such order as the convening officer directs.

(c) When the court have tried the prisoner upon all the charge-sheets they shall, in the case of the finding being "Not guilty" on all the charges, proceed as directed by Rule 44, and, in case of the finding on any one or more of the charges being "Guilty," proceed as directed by Rules 36 and 45 to 49, both inclusive, in like manner in each case, as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same effect as if all the charges had been contained in one charge-sheet.

(d) If the convening officer directs that, in the event of the conviction of a prisoner upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court in such event may, without trying the prisoner upon any of the subsequent charge-sheets, proceed as before directed by (c).

(e) Where a charge-sheet contains more than one charge, the prisoner may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately; and in such case the court, unless they think his claim unreasonable, shall arraign and try the prisoner in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets.

(f) If the prisoner pleads "Guilty" to a charge in a charge-sheet, and the trial does not proceed (as mentioned in Rule 36 (b)), with respect to the other charges in that charge-sheet, the court shall, subject to the directions of the convening officer, proceed to try the prisoner on the charges in the next charge-sheet before they proceed as directed by Rule 36 (c), (d), (e), and (f).

(A) Most of the ordinary cases which come before courts-martial are so simple in their facts that a prisoner is not embarrassed by being tried at the same time for several charges; but embarrassment will certainly arise if the facts of any of the charges are very complicated, or if the alleged offences were committed at different times, or if different sets of witnesses are required to prove the different offences. In such cases, even practised advocates and judges find a great difficulty in keeping the different charges and the evidence in each charge distinct, and still more will the difficulty be felt by an uneducated prisoner, and by a court not constantly accustomed, like a civil court, to deal with evidence.

In such cases, therefore, as a general rule, the convening officer should cause the charges to be inserted in separate charge-sheets.

The cases which are likely to arise may be classified as follows:—

Case No. 1. (Single offence repeated on different days.) The first case arises where the prisoner has been guilty of the same description of offence on two or more different days. For example, a soldier steals from a comrade a watch on Monday, a

pair of shoes on Tuesday, a pair of stockings on Wednesday, and so forth. Supposing he had stolen all these articles at the same time, it would have constituted the same offence, but if he steals them on separate days, the offences are obviously distinct.

Case No. 2. (Several offences forming part of one wrongful transaction). A more difficult case arises where the set of acts of which a prisoner has been guilty are in fact part of one wrongful transaction, so to speak, and yet involve several military offences of different descriptions.

For instance, a soldier, being drunk, uses insubordinate language to his serjeant, knocks him down and then runs away. He commits four offences: (1) the offence of drunkenness; (2) the use of insubordinate language to his superior officer; (3) the striking his superior officer; (4) desertion, or absence without leave.

Case No. 3. (Several offences, not forming part of the same wrongful transaction.) Another case arises where several offences of different descriptions have been committed by the same person, but at different times. For example, suppose that in the preceding case the desertion, or absence without leave, had taken place some time after the commission of the two previous offences, and in such manner that they could not be deemed part of the same wrongful transaction.

In case No. 1, the offences being of the same description, may, as a general rule, be contained in the same charge-sheet; but many offences of the same description should not be inserted in the same charge-sheet, as to do so might embarrass the prisoner in his defence. Usually it will be undesirable to insert more than three charges for offences of the same description in the same charge-sheet, unless the offences have been part of a system, as, for instance, a system of embezzlement carried on by the prisoner, in which case it may not be improper to increase the number of charges.

In case No. 2, four offences constitute one wrongful transaction, and therefore may be included in the same charge-sheet; but if they are so included, the prisoner must not at the same time be charged in the same charge-sheet with any previous offence of the same description; as, for instance, any previous offence of striking his superior officer, or of desertion, &c.

In case No. 3, if the prisoner is charged both with striking his superior officer and with desertion, or absence without leave, the latter offence should not be included in the same charge-sheet as the former.

In practice, in such an instance as case No. 2, the serious offences of striking a superior officer and of desertion or absence without leave, should alone be charged.

Indeed, it is advisable as far as possible to avoid charging a prisoner with more than one offence, as a multiplicity of charges leads to unnecessary trouble and confusion; and if the gravest of several offences is selected, the punishment will in all probability be sufficient to satisfy the ends of justice. It may, however, in some cases be necessary to prove several offences, in order to guide the court as regards the proper amount of punishment.

Assuming that it is doubtful whether one or more of a set of offences can be proved, it will of course be advisable to omit any offence the evidence with respect to which is doubtful, and to bring before the court those charges only of which the proof appears to be sufficient.

The result of the above remarks is as follows (see also note, p. 476):—

(i) Repeated instances of the same description of offence may be included in the same charge-sheet, though each instance must constitute a separate charge.

(ii) Offences of different descriptions should be included in separate charge-sheets, except where they form part of the same wrongful transaction.

(iii) If offences of different descriptions are included in one charge-sheet as forming part of one wrongful transaction, any act other than an act which forms part of that wrongful transaction should not be charged as an offence in the same charge-sheet.

(iv) Where one offence has in fact been committed, but doubt arises as to what particular description of offence has been committed, one charge-sheet may include charges for offences of different descriptions, but each charge will refer to the same set of particulars.

(B) The convening officer will regulate the order for the trial of different charge-sheets according to the gravity of the offence and the convenience of summoning the witnesses, or other circumstances. It is desirable to try first the gravest offence, as, if the prisoner is convicted, he will be sufficiently punished without trying him on the minor offences. In some cases, it may be better to try a prisoner on a simple case first, so as to avoid the necessity, if he is convicted upon that, of trying him for an offence where the case is complicated, and the number of witnesses is large.

(C) It will be observed, that the separation of charges in different charge-sheets is merely for the purpose of enabling the court and the prisoner to keep distinct in their minds the different cases and the evidence thereon, with a view to the prisoner making a proper defence, and the court arriving at a proper finding, without being confused by evidence on entirely distinct cases; and that the result, when the time for sentence is reached, is the same as if the prisoner had been tried at the same time on all the charge-sheets. Unless, therefore, the convening officer directs under (D) that the prisoner need not be tried upon the subsequent charge-sheets, the court will not sentence the prisoner until they have disposed of all the charge-sheets, and will then award one sentence in respect of all the charges contained in the different charge-sheets of which the prisoner has been found guilty.

(D) It will often be unnecessary, if the prisoner is convicted of a grave charge contained in one charge-sheet, to proceed with any other or minor offences contained in the different charge-sheets. It may, however, in some cases be necessary to try the prisoner on a subsequent charge-sheet, in order to justify a more severe sentence for the offence charged in the first charge-sheet.

(E) The court should always, unless they think the claim very unreasonable, accede to a demand to be tried separately in respect of any particular charge.

(F) The object of this is only to provide that all the charge-sheets should be disposed of before the court proceed to sentence the prisoner; in the case of "Not guilty," this is provided for by (C).

Sitting in
closed court.

62. (A) When a court-martial sit in closed court on any deliberation amongst the members or otherwise, no person shall be present except the members of the court, the

judge-advocate, and any officers under instruction ; and the court may either retire or may cause the place where they sit to be cleared of all other persons not entitled to be present.

(B) Except as above mentioned all the proceedings, including the view of any place, shall be in open court and in the presence of the prisoner.

(A) *Cleared*.—See Army Act, s. 53 (5).

(B) *Shall be in open court*.—This does not control the power of the court to exclude a person who interferes with the proceedings—a power incident to every court as necessary for the proper conduct of the proceedings, though it does not extend to the exclusion of the prisoner, as the trial cannot proceed in his absence.

View.—See Army Act, s. 53 (7). All the members must proceed to view any place, and the prisoner must be present there ; usually the court will adjourn for the purpose to the place to be viewed.

63. (A) A court-martial may sit at such times and for such period between the hours of six in the morning and six in the afternoon, as may be directed by the proper superior military authority, and, so far as no such direction extends, as the court from time to time determine. Time for trial.

(B) If the court consider it necessary to continue a trial after six in the afternoon they may do so, and if they do so should record in the proceedings their reason for so doing.

(C) In cases requiring an immediate example, or when the convening officer, or the general or other officer commanding any body of troops, certifies under his hand that it is expedient for the public service, trials may be held at any hour.

(D) If the court or the convening officer, or other superior military authority, think that military exigencies or the interests of discipline require the court to sit on Sunday, Christmas Day, or Good Friday, the court may sit accordingly, but otherwise the court should not sit on any of those days.

(A) See Q. R., 1885, Sect. VI, para. 96, and next rule and note.

(C) This certificate should be annexed to the proceedings.

(D) The requisition should be annexed to the proceedings.

64. (A) When a court is once assembled and the prisoner has been arraigned; the court should (but subject to the provisions of the Army Act, 1881, and of these rules as to adjournment) continue the trial from day to day and sit for a reasonable period on every day, unless it appears to the court that an adjournment is necessary for the ends of justice, or that such continuance is impracticable. Continuity of trial and adjournment of court.

(B) A court-martial in the absence either of a president,

or of a judge-advocate (if a judge-advocate has been appointed for that court-martial), shall not proceed, and if necessary shall adjourn.

(c) The senior officer on the spot may also, for military exigencies, adjourn or prolong the adjournment of the court.

(d) Any adjournment may be made from place to place as well as from time to time. If the time to which the adjournment is made is not specified, the adjournment will be until further orders from the proper military authority; if the place to which such adjournment is made is not specified, the adjournment will be to the same place or to such place as may be specified in further orders from the proper military authority.

(A) *Subject to the provisions, &c.*—The Army Act, s. 53 (6), authorises the court to adjourn from time to time without any restriction. It is, however, very important, that a trial by court-martial once begun, should proceed with strict regularity and without interruption to its conclusion. This rule, therefore, requires the court to sit continuously from day to day, unless it is impracticable to do so, or unless an adjournment is necessary for the ends of justice.

Thus the court may adjourn on account of the illness of the prisoner, or for the purpose of viewing any place, or of securing the attendance of witnesses (see Rule 78), or of obtaining evidence from recusant witnesses, or of obtaining the opinion of the Judge-Advocate-General, or for reference to the convening or confirming officer on any question, or for any purpose, if the court are of opinion that such adjournment is necessary for the ends of justice. (See note to Rule 75.)

The court, however, should not as a rule permit an adjournment for the purpose of obtaining further evidence on the part of the prosecution, and should only adjourn for the production of evidence for the prisoner, where they consider that he has not previously had sufficient opportunity for procuring his witnesses, or where it would be unjust to the prisoner not so to adjourn. Great care, therefore, must be taken both by the prosecutor and by the prisoner to have ready at the trial all the witnesses and documents they desire respectively to produce. The court should adjourn, if an adjournment is requested by the prisoner to prepare his defence, by the prosecutor to prepare his reply, or by the judge-advocate to prepare his summing-up.

In the event of the illness of a member, the court may, if not reduced below its legal minimum, either proceed without him, or adjourn, as they think proper; but if reduced below the legal minimum, Rule 65 applies.

When a court adjourns before the conclusion of the trial, the adjournment is to be entered in the proceedings (see Appendix II, Form of Proceedings, para. (5), p. 520), and either announced in court in the presence of the prisoner, or communicated to the prosecutor and prisoner.

Rules as to adjournment.—See Rules 14, 18, 22 (C), 23 (B) 33 (B), 34 (C), (D), 43 (E), (F), 64 (B), (C), (D), 66, 75, 78, 100.

Reasonable period.—Sittings of six or seven hours will be found, as a rule, quite long enough, and they should not be further protracted without some special reason. Q.R., 1885, sect. VI, para.

96. Too long sittings unduly strain the attention of the members ; and may operate unfairly to the prisoner, as at the close of a long sitting he cannot properly make his defence.

Every day, i.e., except Sunday, &c., see Rule 63 (D).

(B) *In the absence of a president.*—If the president dies, or is unable to attend, the convening authority may appoint the senior member of the court (being of sufficient rank) to be president, assuming the court not to be reduced below the legal minimum. If he is not of sufficient rank, the court will be dissolved. Army Act, s. 53 (2). Where the inability of the president to attend is merely temporary, no new appointment will be necessary, and the court will adjourn till he is able to attend. The senior member will always report the fact of the death or inability to attend of the president to the convening authority. Rule 65 (A).

(C) *Military exigencies.*—These can seldom occur, except on active service.

(D) *From place to place.*—This meets the case of a view, as well as of a court-martial held on the line of march ; also the case of adjournment to the quarters of a sick witness, for the purpose of taking his evidence.

65. (A) Where, in consequence of anything arising while the court are sitting, the court are unable by reason of dissolution (as specified in section 53 of the Army Act, 1881, or otherwise), or of the absence of the president, to continue the trial, the president, or, in his absence, the senior member present, will immediately report the facts to the convening authority. Suspension of trial.

(B) Where a court-martial is dissolved before the finding, or, in case of a finding of guilty, before the sentence, the proceedings are null, and the prisoner may be tried before another court-martial.

(A) *While the court are sitting.*—Anything which occurs while the court are not sitting will usually be reported in some other way to the convening authority ; if not it should be reported as directed by this rule.

By dissolution.—A court is dissolved if, after the commencement of the trial, the court is by death or otherwise reduced below the legal minimum (see notes to Rules 16–18), or if on account of the illness of the prisoner before the finding (see next rule) it is impossible to continue the trial, or if on the failure of the president a new president cannot be appointed. Army Act, s. 53 (1) (2), (3).

Senior member.—That is, according to the rank in which they take their seats. See Rule 57.

For Form see Appendix II, Form of Proceedings, para. (5), p. 521.

66. In case of the death of the prisoner or of such illness of the prisoner as renders it impossible to continue the trial, the court will ascertain the fact of the death or illness by evidence, and record the same, and adjourn, and transmit the proceedings to the convening authority. Proceeding on death or illness of prisoner.

See Army Act, s. 53 (3).

This evidence will be taken on oath, or solemn declaration, in the same manner as on the trial.

Presence
throughout
of all mem-
bers of court.

67. (A) A member of a court who has been absent while any part of the evidence on the trial of a prisoner is taken can take no further part in the trial by that court of that prisoner, but the court will not be affected except as provided by section 53 of the Army Act, 1881.

(B) An officer cannot be added to a court-martial after the prisoner has been arraigned.

(A) *Except as provided*, that is, unless it is reduced below the legal minimum, and so dissolved under s. 53 of the Army Act.

(B) *Arraigned*. See ch. III. para. 49.

Taking of
opinions of
members of
court.

68. (A) Every member of a court must give his opinion on every question which the court has to decide, and must give his opinion as to the sentence, notwithstanding that he has given his opinion in favour of acquittal.

(B) Subject to the provisions of the Army Act, 1881, every question shall be determined by an absolute majority of the opinions of the members of the court, and in the case of an equality of opinions the president's second or casting vote will be reckoned as determining the majority.

(C) The opinions of the members of the court should be taken in succession, beginning with the junior in rank.

(B) *Absolute majority*.—Otherwise, a punishment might be imposed by a minority. For instance, if the punishment proposed by four members was penal servitude, by three imprisonment, and by two a forfeiture, the penal servitude might be imposed, although five members were opposed to it.

In order to obtain the absolute majority, it will be desirable, first to take the opinion of the members of the court as to the nature of the punishment to be awarded, that is to say, penal servitude, imprisonment, cashiering, forfeiture, or other punishment.

Where opinions differ as to the nature of punishment, the most lenient should be put first, then the next most lenient, and so forth, the most severe being put last. Any member who is in favour of the most lenient punishment, if overruled, will, of course, give his opinion in favour of the next most lenient, and will not oppose this because he is desirous of having the punishment still more lenient.

For example, if the court consist of nine members, of whom four are in favour of penal servitude, three of imprisonment, and two of a forfeiture, the forfeiture will be put first to the court, and when negatived, the imprisonment will be put next. The members who were in favour of forfeiture will, of course, vote for imprisonment as against penal servitude, and thus five votes will be given in favour of imprisonment, being an absolute majority of the court.

When the nature of the punishment has been determined, the quantum of punishment must be ascertained; that is to say, in the case of imprisonment, the number of months or days of imprisonment.

As before, the most lenient proposal will be put first, and a member who is in favour of the shortest term of imprisonment will, of course, support the next shortest term, rather than support a longer term, and will not give his opinion against the next shortest term merely because he desires to have a term shorter still.

For example, if in a court of nine members two members desire to award three months' imprisonment, two others four, another six, and the other four ten months, the three months will be put first, and, when negatived, the four months will be put next, which will be supported by the members who wished for three months, but will be opposed by the members who desire a longer term. The six months will next be put, and will be supported by those who desire to award three months and four months, so that the ultimate sentence will be six months' imprisonment.

It is not a proper course of proceeding to take the terms of imprisonment or other punishment proposed by each member, and strike an average; but naturally in the course of discussion among the members of the court, some punishment intermediate between the most severe and most lenient punishment proposed by the different members will usually be arrived at, without necessarily resorting to actual voting, as in the above examples.

(B) The provisions of the Army Act referred to are those contained in s. 48 (8) where the concurrence of two-thirds is required for a sentence of death; in s. 53 (8), where an equality of votes on the finding is declared to be an acquittal; and in s. 51 (3) and (5), under which an objection to the president allowed by one-third of the members, and an objection to an officer allowed by one-half of the members is to be allowed.

(C) *Junior in rank*, i.e., rank in which they take their seats (Rule 57).

The opinion of each member is taken separately on each charge (Rule 42 (B)). If there is a judge-advocate, the opinions are taken by him; if there is not, then by the president.

69. If any question should arise incidentally during the trial, the person, whether prosecutor or prisoner, requesting the opinion of the court is to speak first; the other person is then to answer, and the first person is to be allowed to reply.

Procedure on incidental question.

This rule will apply to such questions as the admissibility of evidence, the propriety of any question, or the recalling of a witness.

70. (A) A court may be sworn at the time to try any number of prisoners then present before it, whether the prisoners are to be tried together or separately, and each prisoner shall have power to object to the members of the court, and shall be asked separately whether he objects to any member.

Swearing of court to try several prisoners.

(B) In the case of several prisoners to be tried separately, the court, upon one of those prisoners objecting to a member, may, according as they think fit, proceed to determine that objection or postpone the case of that prisoner, and swear the members of the court for the trial of the others alone.

(c) In the case of several prisoners to be tried separately, the court, when sworn, shall proceed with one case, postponing the other cases, and taking them afterwards in succession.

(A) Under this rule it will not be necessary, where there are several prisoners to be tried separately, to go through the process of swearing the court for each, but all the prisoners may be brought up together, and the proceedings for objections to and swearing the members (see Rules 25 to 30) may be gone through for all the prisoners at the same time. After the members are sworn, those prisoners who are not then to be tried will be removed.

This course of procedure will not affect the position of the court, which will, as heretofore, be a separate court for the trial of each case, and, as heretofore, the swearing of the court will be mentioned in the proceedings of each separate case.

(B) It need hardly be observed that when, in consequence of an objection by one prisoner a new officer serves, the other prisoners who before made no objection to the court will have the right to object to the new officer.

(C) It is obvious that in the case of several prisoners being tried together, each prisoner will be called on separately to plead and make his defence, and a finding must be arrived at separately for each prisoner, and each prisoner found guilty must be separately sentenced, and a separate record accordingly will be made in the proceedings. It may be proper to make a distinction between the sentences of prisoners found guilty of the same offence, having regard to rank, character, degree of criminality, or other considerations.

Swearing of
interpreter
and short-
hand writer.

71. (A) At any time of the trial an impartial person may, if the court think it necessary, and shall, if either the prosecutor or the prisoner requests it on any reasonable ground, be sworn to act as interpreter.

(B) An impartial person may at any time of the trial, if the court think it desirable, be sworn to act as a shorthand writer.

(c) Before a person is sworn as interpreter or shorthand writer, the prisoner should be informed of the person who is proposed to be sworn, and may object to such person as not being impartial; and the court, if they think that such objection is reasonable, shall not swear that person as interpreter or shorthand writer.

(A and B) It will often be convenient to swear a shorthand writer and interpreter at the same time as the members and officers of the court are sworn, but this is not obligatory. For form of oath and solemn declaration see Rules 27 and 28. For remarks on employment of interpreter, ch. III, para. 70.

(C) Any objection made by the prisoner to the interpreter or shorthand writer will be dealt with in the same way as an objection to a member of the court.

The court should, if the prisoner requests it, allow him to call witnesses in support of the objection, but any objection which appears to the court to have any foundation should, as a rule, be allowed.

General Provisions as to Witnesses and Evidence.

72. (A) A court-martial shall not receive evidence for the prosecution which is not relevant to the facts stated in the statement of particulars in the charge, or any evidence which is not admissible either according to the rules of civil courts in England, or under the Army Act, 1881, or under any other Act of the United Kingdom.

Evidence to be relevant and according to rules in English courts.

(B) The rules of evidence adopted in civil courts in England will be followed by courts-martial, and objections to any question to a witness or to the admission of any evidence may be made accordingly, and a person will not be required to answer any question or produce any document which he could not be required to answer or produce in a like proceeding before a civil court in England.

(C) By "civil court" in this rule is meant a court of ordinary criminal jurisdiction in England, including a court of summary jurisdiction.

(A) With respect to the relevancy of evidence, see the note on Rule 59 (B), and as to relevancy and inadmissibility of evidence generally, see chapter IV, paras. 15-81.

The provisions of the Army Act referred to in this paragraph are ss. 163, 164, and 165.

(B) and (C). The Army Act, by s. 128, directs courts-martial to follow the rules of evidence which are followed in courts of ordinary criminal jurisdiction in England. Moreover, s. 127 of the Act expressly lays down that courts-martial are not to be subject in any respect to any Indian, colonial, or foreign statute law or ordinance.

73. The court may take judicial notice of all matters of notoriety, including all matters within their general military knowledge.

Judicial notice.

Judicial notice means that the court will recognise a matter without formal evidence (see ch. IV, paras. 10, 11).

74. The prosecutor is not bound to call all the witnesses whose evidence is in the summary of evidence, or in the abstract of evidence given to the prisoner, but he should ordinarily call such of them as the prisoner desires to be called, in order that the prisoner may, if he thinks fit, cross-examine them, and the prosecutor should for this reason, so far as seems to the court practicable, secure the attendance of all such witnesses.

Calling of all prosecutor's witnesses.

As the cross-examination of a witness for the prosecution may be most material for the purposes of the defence, a prosecutor should always have all his witnesses present. Failure to produce a material witness for cross-examination might invalidate the proceedings. Any witness whose evidence is in the summary or abstract of evidence, and whom the prisoner asks to have called, should be called by the prosecution.

(A.M.L.)

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The object of this rule is to enable the prosecution to proceed, although some witness is not available, and the rule is not intended to absolve the prosecutor from the responsibility of proving his case, or of calling all the available witnesses who can give material evidence (see note to rule 59), and, as a rule, the whole case as it appears in the summary of evidence should be proved by the prosecutor. If the case fails from the prosecutor not calling any available witness, or not asking any necessary questions of a witness, he becomes personally responsible to the convening officer.

Calling of witness whose evidence is not contained in summary or abstract.

75. If the prosecutor intends to call a witness whose evidence is not contained in any summary or abstract given to the prisoner, notice of the intention shall be given to the prisoner a reasonable time before the witness is called; and if such witness is called without such notice having been given the court shall, if the prisoner so desire it, either adjourn after taking the evidence of the witness, or allow the cross-examination of such witness to be postponed, and the court shall inform the prisoner of his right to demand such adjournment or postponement.

Where no summary or abstract has been delivered (as *e.g.*, on suspension under Rule 102 of Rule 14) this rule will apply to every witness.

The court are, under Rule 84 (D) justified in calling of their own motion a witness not produced by the parties, if they consider it necessary for the ends of justice, but this power should be sparingly exercised; and they should not adjourn in order to obtain for themselves further testimony.

List of prisoner's witnesses.

76. The prisoner shall not be required to give to the prosecutor a list of the witnesses whom he intends to call, but it shall rest with the prisoner alone to secure the attendance of any witness whose evidence is not contained in the summary or abstract, and for whose attendance the prisoner has not requested steps to be taken as provided by Rule 14 (A).

The prosecutor may be called as a witness for the defence. The judge-advocate, though not competent as a witness for the prosecution, may be called for the defence. A member of a court-martial is a competent witness for the defence, but not for the prosecution (Army Act, s. 50 (3); and may be sworn at any stage of the proceedings; but it is desirable to avoid placing officers on courts-martial whose evidence is likely to be required. It need scarcely be observed that a member, if called on to give evidence, must be sworn like other witnesses in open court, and be subject to cross-examination, and that he does not cease in any respect to be a member of the court.

Procuring attendance of witnesses.

77. (A) The convening officer, or after the assembly of the court the president, shall take the proper steps to procure the attendance of the witnesses whom the prosecutor or prisoner desires to call, and whose attendance can reasonably be procured, but the person requiring the

attendance of a witness may be required to undertake to defray the cost (if any) of such attendance.

(B) Any such witness who is not subject to military law may be summoned to attend by order under the hand of the convening officer, the president of the court, the judge-advocate, or the commanding officer of the prisoner.

(c) Any such witness who is subject to military law shall be ordered to attend by the proper military authority.

(A) *Whose attendance can reasonably be procured.*—These words will prevent a prisoner having any technical ground of complaint in case a distant witness whom he requires is not procured; but it is the duty of the officer (whether the convening officer or the president) to secure the attendance of every witness whom there is any ground to suppose to be material for the defence, and the court should adjourn, if necessary, for the purpose. (See Rule 78.)

May be required to undertake to defray the cost.—This power is given in order to prevent prisoners or prosecutors demanding unreasonably the attendance of witnesses. In the case of the prosecutor, the cost would usually be defrayed as part of the expenses of the prosecution. In the case of the prisoner, this provision should not be allowed to interfere with the calling of a witness who appears to be material. The absence of a material witness may be held afterwards to invalidate the proceedings of the court-martial, even though, if the witness had been called, the court would probably have arrived at the same decision, inasmuch as it is impossible to tell what effect the evidence of such a witness might have had on the court.

See generally as to expenses of witnesses, ch. III, paras. 67, 68.

If a witness has in his possession or under his control any books, accounts, letters, returns, papers, or other documents which are thought necessary for the trial, care must be taken, in summoning him, to require him to bring them with him; as he would be justified in declining to acknowledge a mere verbal request.

(B) A witness summoned or ordered to attend before a court-martial has the same privilege from arrest as a witness before one of the superior civil courts. (Army Act, s. 125 (2). See note as to what this privilege is. If a witness not subject to military law makes default in obeying a summons after payment or tender of his expenses, he can be punished by a civil court. (Army Act, ss. 126, 180 (1).)

Order.—For Form see Appendix II, Form of Proceedings, p. 534.

(C) Disobedience to any such order is punishable under s. 23 (1) of the Army Act.

There is no rule of law which exempts the governor or the general commanding in a colony from giving evidence; but regard must be had to the dignity of his office, and it is clear that he would be justified in declining to answer questions respecting confidential official correspondence, and like matters, on grounds of public policy. (See ch. IV, paras. 95–98.)

78. If such proper steps as mentioned in the preceding rule have not been taken as to any witness, or if any witness whose attendance could not be reasonably procured before the assembly of the court is essential to the prosecution.

(A.M.L.)

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Adjournment of court for non-attendance of witnesses.

cution or defence, the court shall adjourn and report the circumstances to the convening officer.

Withdrawal
of witnesses
from court.

79. During the trial a witness other than the prosecutor ought not, except by special leave of the court, to be in court while not under examination, and if while he is under examination a discussion arises as to the allowance of a question, or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.

As the trial begins with the arraignment of the prisoner, any witnesses in court should be ordered to withdraw before he is arraigned. If any such discussion as is mentioned in the rule arises, the court should generally order the witness to withdraw, as the discussion might influence his answer.

Swearing of
witnesses.

80. (A) Every witness, before he gives his evidence, shall be sworn by the judge-advocate, or by the president, or by a member of the court.

(B) The form of oath for a witness shall be as follows :—

The evidence which you shall give before this court shall be the truth, the whole truth, and nothing but the truth.

So help you God.

(c) Rule 30 shall apply to every witness.

(d) Where a witness is permitted to make a solemn declaration instead of being sworn the declaration may be taken before a person authorised to administer the oath, and the form of declaration shall be as follows :—

I, _____, do solemnly promise and declare that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

(A) See Army Act, s. 52 (3). As to mode of administration of the oath, see Rule 30 and note.

(D) A solemn declaration is allowed to be made in the circumstances mentioned in s. 52 (4) of the Army Act, that is to say, where the witness objects to take an oath, and the court are satisfied of the sincerity of the objection, or he is objected to as incompetent to take an oath and the court are satisfied of the oath having no binding effect on his conscience.

If a witness refuses to be sworn or make a declaration, or to produce any document in his possession or control legally required by the court to be produced, or to answer any question to which the court may legally require an answer; the court may, if he is subject to military law, order him to be taken into military custody, with a view to his punishment, Army Act, s. 28, and if he is not so subject, may certify the offence to a civil court, with a view to his punishment by such court, Army Act, s. 126. The civil court will be the same as that mentioned in the note to s. 126 (3).

Mode of
questioning
witnesses.

81. (A) Every question may be put to a witness orally by the prosecutor, prisoner, or judge-advocate, without the intervention of the court, and the witness will forthwith

reply, unless an objection is made by the court, judge-advocate, prosecutor, or prisoner, in which case he will not reply until the objection is disposed of. The witness will address his reply to the court.

(B) The evidence of a witness as taken down should be read to him after he has given all his evidence and before he leaves the court, and such evidence may be explained or corrected by the witness at his instance. If he makes any explanation or correction, the prosecutor and prisoner may respectively examine him respecting the same.

(A) As under this rule every question may be put to a witness without being previously written down and submitted for the approval of the president or the court, the court and the judge-advocate, as well as the prosecutor, will have to attend to questions put, so as to object, if necessary, to the question before the witness replies to it.

Address his reply to the court.—That is, he must not address the prosecutor or prisoner in the second person, as such mode of address may lead to an altercation.

(B) *Read to him.*—When the evidence of a witness has been read to him, he should be asked whether it is correct. Any material alteration or explanation should be inserted at the end, and not by way of interlineation or erasure.

82. (A) A witness may be examined by the person calling him, and may be cross-examined by the opposite party to the proceeding, and on the conclusion of the cross-examination may be re-examined by the person calling him on matters raised by the cross-examination. Examination and cross-examination.

(B) The court may, if they think fit, allow the cross-examination of a witness to be postponed.

See Appendix II, Form of Proceedings, para. (5), p. 519.

For the law relating to the examination, cross-examination, and re-examination of witnesses, see ch. IV, paras. 104-119.

(B) The court should, if the prisoner requests it, allow the cross-examination of a witness to be postponed, unless the request appears to be made for the purpose only of obstruction.

83. (A) At any time before the time for the second address of the prisoner, the judge-advocate, also any member of the court, may, with the permission of the court, address through the president any question to a witness. Questions to witness by members of court or judge-advocate.

(B) Upon any such question being answered, the president shall also put to the witness any question relative to that answer which he may be requested to put by the prosecutor or the prisoner, and which the court deem reasonable.

Any question put by a member of the court or judge-advocate will ordinarily be more conveniently put after the examination of the witness by the prosecutor and the prisoner is concluded, but before any other witness is called,

The court should always, under the power given by this rule, ask a witness any question which they are requested by the prosecutor or the prisoner to ask, and does not seem unreasonable.

Re-calling of witnesses, and calling of witnesses in reply.

84. (A) At the request of the prosecutor or prisoner a witness may, by leave of the court, be re-called at any time before the time for the second address of the prisoner for the purpose of having any question put to him through the president.

(B) A witness may, in special cases, be allowed by the court to be called or re-called by the prosecutor before the time for the second address of the prisoner, for the purpose of rebutting any material statement made by a witness for the defence upon his examination by the prisoner on any new matter which the prosecutor could not reasonably have foreseen.

(c) Where the prisoner has called witnesses as to character, the prosecutor before the time for the second address of the prisoner may call or re-call witnesses for the purpose of proving a previous conviction or entries in the defaulters' book against the prisoner.

(d) The court may call or re-call any witness at any time before the finding, if they consider that it is necessary for the ends of justice.

(A) The president should also put to the witness any question relevant to the answer given which, if the witness was re-called at the request of the prosecutor, the prisoner, or if he was re-called at the request of the prisoner, the prosecutor, requests him to put.

(D) The power of calling a new witness should only be exercised by the court in cases of unforeseen witnesses becoming available, or of some exceptional circumstances, and should not be exercised to supplement any negligent conduct on the part of the prosecution. If a new witness is so called, the court should ordinarily allow him to be cross-examined by the other parties. If a witness is re-called, the questions asked should be limited to one or two questions relating to the evidence previously given by that witness.

It is very desirable that no witness should be called or re-called after the second address of the prisoner, as otherwise some irregularity is introduced into the proceedings; because, if new matter is introduced by such witness, it is necessary for the court, if so requested, to allow the prosecutor and the prisoner respectively to call witnesses in reply, and the prisoner to address the court with respect to such evidence, and the judge-advocate to supplement his summing up by a reference to such evidence. This remark, however, will not apply where the questions put to a witness re-called are limited as before suggested.

Friend of Prisoner and Counsel.

Prisoner may have a person to assist him on trial.

85. (A) A prisoner may have a person to assist him during the trial, whether a legal adviser or any other person.

(B) A person so assisting him may advise him on all points, and suggest the questions to be put to witnesses; and, if an officer subject to military law, shall have the same rights and duties as counsel have under these rules, and the right of the prisoner shall be limited in like manner.

A person acting as a counsel, though not bound to such strict impartiality as the prosecutor, must still recollect that he is assisting in the administration of justice, and must not be guilty of any unfairness or want of candour. In his address, however, he will have the same liberty as the prisoner, see Rule 59 (C); but he must be even more guarded in referring to the conduct of persons not before the court.

A person who is not subject to military law cannot, unless a counsel, under any circumstances, either examine witnesses orally or address the court, though he may be present in court and aid the prisoner.

The court should not allow the prisoner to address them in addition to his counsel, or officer acting as counsel, except as prescribed by Rule 92 (A).

The prisoner will, of course, be allowed every facility for communicating with his friend, whether a military man or counsel or not.

86. (A) Subject to these rules, counsel shall be allowed to appear on behalf of the prosecutor and prisoner at general courts-martial :

Counsel allowed in certain general courts-martial.

- (1) When held in the United Kingdom ; and
- (2) When held elsewhere, if the commander-in-chief, or the convening officer, declares that it is expedient to allow the appearance of counsel thereat, and such declaration may be made as regards all general courts-martial held in any particular place, or as regards any particular general court-martial, and may be made subject to such reservation as to cases on active service, or otherwise, as seems expedient.

(B) Save as provided in Rule 85, the rules with respect to counsel will apply only to the courts-martial at which counsel are under this rule allowed to appear.

87. (A) Where a prisoner gives notice of his intention to have a counsel to assist him during the trial, either on the day on which he is informed of the charge or at any time not being less than seven days before the trial, or such shorter time before the trial as in the opinion of the court would have enabled the prosecutor to obtain, if he had thought fit, a counsel to assist him during the trial, and would have enabled the authority appointing a judge-advocate to appoint a counsel to act as judge-advocate at the trial, or where such notice as mentioned in (B) is given to the prisoner on the part of the prosecution,

Requirements for appearance of counsel.

a counsel may appear at the court-martial to assist the prisoner.

(B) If the convening officer so directs, a counsel may appear on behalf of the prosecutor, but in that case, unless the notice in (A) has been given by the prisoner, notice of the direction for counsel to appear shall be given to the prisoner at such time (not in any case less than seven days) before the trial, as would, in the opinion of the court, have enabled the prisoner to obtain a counsel to assist him at the trial.

(C) A counsel who appears before a court-martial on behalf of the prosecutor or prisoner, shall have the same right as the prosecutor or prisoner for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to put in any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person; and in such case that person shall not have the right himself to do any of the above matters except as regards the statement allowed by Rule 92, or except so far as the court permit him so to do.

(D) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined and re-examined as any other witness, and Rule 38 (c) and (d) shall not apply.

Counsel for
prosecution.

88. (A) The counsel for the prosecution should always make an opening address, and should state therein the substance of the charge against the prisoner, and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into unnecessary detail.

(B) The counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped and restrained by the court in the manner provided by Rule 59 (B).

Counsel for
prisoner.

89. (A) The counsel appearing on behalf of the prisoner has the like rights and is under the like obligations as are specified in Rule 59 (c) in the case of the prisoner.

(B) If the court ask the counsel for the prisoner a question as to any witness or matter he may decline to answer, but he must not give to the court any answer or information which is misleading.

General
rules as to
counsel.

90. (A) Counsel, whether for the prosecution or for the prisoner, will conform strictly to these rules and to the rules of civil courts in England relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of counsel.

(B) If a counsel puts to a witness a question as to a

matter which is not relevant except so far as it affects the credit of the witness by injuring his character, and the witness objects to answering the question, the court shall consider whether the witness should be compelled to answer it; and

- (1) If they are of opinion that the imputation conveyed by the question would, if true, seriously affect their opinion as to the credibility of the witness, the court should require the witness to answer the question; but
- (2) If they are of opinion that the said imputation, if true, would not affect, or would not seriously affect the opinion of the court as to the credibility of the witness, the court should disallow the question.

If the question is disallowed, counsel on both sides will refrain from further examining or commenting on the said matter.

(c) Counsel will not state as a fact any matter which is not proved or which he does not intend to prove in evidence.

(d) Counsel will not state what is his own opinion as to any matter of fact before the court.

(e) Counsel will not, in a question to any witness, assume that facts have been given in evidence which have not been given in evidence, or that particular answers have been given contrary to the fact.

(f) Counsel will treat the court and judge-advocate with due respect, and shall, while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the prisoner who may attend as a witness.

91. (A) Neither the prosecutor nor the prisoner has any right to object to any counsel, if properly qualified.

Qualifica-
tion of
counsel.

(B) A counsel shall be deemed properly qualified—

- (1) If in England or Ireland he is a barrister-at-law.
- (2) If in Scotland he is an advocate.
- (3) If in India he is a barrister-at-law or advocate.
- (4) If in any other part of Her Majesty's dominions, he is recognised by the convening officer as having in that part rights and duties similar to those of a barrister-at-law in England and as being subject to punishment or disability for a breach of professional rules.

92. (A) A prisoner, assisted by counsel, or by an officer subject to military law, may, if he thinks fit, at the close of the case for the prosecution, and before the address by such counsel or officer, make any statement giving his own account of the subject of the charges against him, but such

Statement
by prisoner
defended by
counsel or
officer.

statement must be made orally, as if he were a witness, except that he must not be sworn and that no question can be put to him by the court or by any person.

(B) If the prisoner makes such a statement, the procedure will, so far as possible, be the same if the prisoner had called witnesses other than witnesses as to character.

(B) Therefore the prosecutor will be entitled to call witnesses in reply, and to reply to the speech of counsel or the officer acting as counsel for the prisoner.

Proceedings.

Record in
proceedings
of trans-
actions of
court-
martial.

93. (A) At a court-martial the judge-advocate, or, if there is none, the president, shall record or cause to be recorded all transactions of that court, and shall be responsible for the accuracy of such record (in these rules referred to as the proceedings); and if the judge-advocate is called as a witness by the prisoner, the president will be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate.

(B) The evidence shall be taken down in a narrative form in as nearly as possible the words used; but in any case where the prosecutor, the prisoner, the judge-advocate, or the court considers it material, the question and answer shall be taken down *verbatim*.

(C) Any question which has been objected to, and the tender of any evidence which has been objected to, shall, if the prosecutor or prisoner so requests, or the court think fit, be entered with the grounds of the objection, and the decision of the court thereon.

(D) Where any address by or on behalf of the prosecutor or prisoner, or the summing up of the judge-advocate, is not in writing, it shall not be necessary to record the same in the proceedings further or otherwise than the court think proper, or in the case of the summing up than the judge-advocate requires, except that—

- (1) the court shall in every case make such record of the defence made by the prisoner as will enable the confirming officer to judge of the reply made by or on behalf of the prisoner to each charge against him; and
- (2) the court should also record any particular matters in the address by or on behalf of the prosecutor or prisoner, which the prosecutor or prisoner, as the case may be, requires.

(E) The court shall not enter in the proceedings any comment, or anything not before the court, or any report of any fact not forming part of the trial; but if any such comment or report seems to the court necessary, the court

may forward it to the proper military authority in a separate document, signed by the president.

(A) The record must be taken in a clear and legible hand, without erasures. Interlineations or corrections must be avoided as much as possible; when made they should be verified by the president's initials. The pages should be numbered and the sheets fastened together, and sufficient space must be left below the signature of the president for the remarks of the confirming authority. The station must be added, together with the date.

(B) *In a narrative form.*—That is to say, the material effect of a question and answer is to be written down as the evidence given by the witness, without distinguishing the question and answer. Thus, suppose the question to be "What did the prisoner do then?" and the answer to be, "He left the room," the evidence taken down would be "prisoner then left the room." Often, especially in cross-examination, the question is irrelevant, or is made irrelevant by the answer; in such cases it will be unnecessary to take anything down.

If the evidence is not given in English, the interpretation into English as given to the court will be taken down, except that where a question or answer is required to be taken down in the proceedings *verbatim*, and is not in English, it must be taken down, as nearly as may be, in the English character, and the interpretation of it into English added.

(E) The court can state in a separate document any remark they think proper to make on the conduct of any person who appeared before them, or on the manner in which a particular witness has given his evidence, or on the manner in which the prosecution has been conducted; also if they think the evidence shows that the prisoner has committed some offence not charged, *e.g.*, if he is charged with desertion in August, and the evidence shows that he deserted in June, they must acquit him, but may report separately the offence of June.

The court can scarcely be too guarded in expressing censure on individuals not before them for trial; indeed, cases justifying such expression will be rare and exceptional.

It will usually be desirable to make a note at the time of any matter upon which the court intend to make any such comment or report, although it will not be correct to enter such matter in the proceedings.

94. The proceedings shall be deemed to be in the custody of the judge-advocate (if any), or if there is none, of the president, but may, with proper precautions for their safety, be inspected by the members of the court, the prosecutor, and prisoner respectively, at all reasonable times before the court is closed to consider the finding. Custody and inspection of proceedings.

95. (A) Where the court is a general court-martial the proceedings shall be at once sent by the person having the custody thereof, to such person as may be from time to time directed by Her Majesty, and, subject to the provisions of any such direction of Her Majesty, as may be directed by the order convening the court. Transmission of proceedings after finding.

(B) Where the court is a district court-martial, the proceedings shall be at once sent by the person having the

custody thereof, to such person as may be directed by the order convening the court, or in default of such direction to the confirming officer.

(c) Where the court is a regimental court-martial, the proceedings shall be at once sent by the president to the confirming officer.

(A) *Persons having the custody*, that is (see Rule 94), if it is a general court-martial, or a district court-martial with a judge-advocate, the judge-advocate, and in any other case, the president of the court.

The proceedings of general courts-martial will be sent, if held in the United Kingdom, to the Judge-Advocate-General in London; if held elsewhere than in the United Kingdom to the General or other officer having power to confirm the findings and sentences of general courts-martial. Q.R., 1885, Sect. VI, para. 108.

Where the court-martial is on a marine, the proceedings will be sent to the Admiralty, and preserved there.

The same course should, so far as possible, be followed with summary courts-martial.

If from any cause a member of the court-martial has become confirming officer, he cannot confirm the finding and sentence of the court, but must transmit the proceedings for confirmation to a superior officer who is competent to confirm the findings and sentences of the like description of court-martial (Army Act. s. 54 (4)). This officer would ordinarily be—in the United Kingdom, if it is a district court-martial, the Commander-in-Chief; if it is a regimental court-martial, the general commanding the military district; in India, if it is a general court-martial the Commander-in-Chief; if it is a district court-martial, the next superior officer having authority to confirm the findings and sentences of general courts-martial, or, if there is none superior, the Commander-in-Chief; and if it is a regimental court-martial, the next superior officer having authority to convene a general or a district court-martial; elsewhere than in India, or the United Kingdom, the next superior officer who is competent to confirm; or if in a colony where there is no such officer, then the governor of the colony.

Any confirming officer has power to withhold his confirmation either wholly or partly, and refer the finding and sentence, so far as he withholds his confirmation, to a superior authority competent to confirm the finding and sentences of the like description of courts-martial (Army Act, section 54 (5)). The reference should be made to one of the officers mentioned above in this note.

The original proceedings, and not a copy, must be signed, and sent to the confirming officer. If the proceedings are recorded and signed in duplicate, one must be treated as a certified copy of the other, and not as the original.

The proceedings should be dated and signed immediately after the finding, in the case of acquittal on the charges (see Rule 44); and after the sentence, in case of a conviction.

Preservation
of proceed-
ings.

96. (A) The proceedings of a court-martial (other than a regimental court-martial) shall, after promulgation, be forwarded, as circumstances require, to the office of the Judge-

Advocate-General in London or India, or to the Admiralty, and there preserved for not less, in the case of a general court-martial, than seven years, and in the case of any other court-martial, than three years.

(b) The proceedings of a regimental court-martial, when promulgated, shall be preserved for not less than three years, with the regimental records of the corps to which the prisoner belonged, in manner from time to time directed by Her Majesty's Regulations.

See note to the next Rule, and Q.R., 1885, Sect. VI, para. 111.

97. The rate at which copies of the proceedings of a court-martial are to be supplied shall be the actual cost of the copy required, not exceeding twopence for every folio of seventy-two words; and the officer or person having the custody of those proceedings must, on demand made within the time limited for the preservation of such proceedings, supply a copy accordingly to any person tried by such court-martial.

Rate of pay-
ment for
copies of
proceedings.

Under s. 124 of the Army Act, a person tried by court-martial has a right, in the case of a general court-martial within seven years, and in the case of any other court-martial within three years after the confirmation of the finding and sentence of the court, to have a copy of the proceedings, including those with respect to revision and confirmation, from the person who has the custody of them, on payment not exceeding 2d. for every seventy-two words. This rule further limits the payment to the actual cost. If the cost exceeds 2d., the prisoner can only be charged 2d., and the rest of the cost must be defrayed by the public.

The above section of the Army Act might possibly be held not to apply to the case of a court-martial where the finding is of acquittal, and thus requires no confirmation, or where the finding and sentence are not confirmed; but the proceedings of every such court-martial will be kept, and the officer having the custody of them will give copies in accordance with the section and the rules.

Time limited.—See Rule 96.

98. (A) If the original proceedings of a court-martial, or any part thereof, are lost, a copy thereof, if any, certified by the president of or the judge-advocate at the court-martial, may be accepted in lieu of the original.

Loss of pro-
ceedings.

(B) If there is no such copy, and sufficient evidence of the charge, finding, sentence, and transactions of the court can be procured, that evidence may, with the assent of the prisoner, be accepted in lieu of the original proceedings, or part thereof lost.

(C) In any case above in this rule mentioned, the finding and sentence, if requiring confirmation, may be confirmed, and shall be as valid as if the original proceedings, or part thereof, had not been lost.

(D) If, in a case where confirmation of a finding or find-

ing and sentence is required, the proceedings, or part thereof, were lost before confirmation, and there is no such copy or evidence, or the prisoner refuses such assent, as above mentioned, the prisoner may be tried again, and on the issue of an order convening the court for such trial, the said finding and sentence of the previous court, of which the proceedings were so lost, shall be null.

(A) *Original proceedings.*—See note to Rule 95; and as to annexing documents to the proceedings, Q.R., 1885, Sect. VI, para. 98.

Sufficient evidence.—This may be obtained by the president, or some member of the court, writing out from memory the substance of the charge, finding, and sentence, and a summary of the transactions of the court, which should be authenticated by the signature of the members. A copy of the charge, however, should always be procured, if practicable, from the officer who framed it, or any other available source.

Judge-Advocate.

Appoint-
ment of
judge-advocate and
disqualifica-
tion.

99. (A) Where the convening officer is authorised to appoint a judge-advocate, he shall, in the case of a general, and may, in the case of a district court-martial, by order appoint a fit person to act as judge-advocate at such court-martial.

(B) An officer who is disqualified for sitting on a court-martial shall be disqualified for acting as judge-advocate at the court-martial.

(C) A court-martial shall not be invalid by reason of any invalidity in the appointment of the judge-advocate officiating thereat, in whatever manner appointed, if a fit person has been appointed; but this rule shall not relieve from responsibility the person who made such invalid appointment.

(B) *Disqualified.*—See Rule 22 and (B) note thereon. A civilian who is under the same disqualification as is mentioned in that rule ought not to serve as judge-advocate, though not in terms disqualified by this rule; indeed, by the Army Act, s. 50 (3), a prosecutor or witness for the prosecution, whether an officer or not, is disqualified for acting as judge-advocate.

(C) The object of this paragraph is merely to prevent a miscarriage of justice in consequence of any invalidity in the appointment of a judge-advocate; not to enable an officer, who is not authorised to appoint a judge-advocate, to appoint one.

An officer who, without due authority, attempts to appoint a judge-advocate, will justly incur censure.

A fit person.—A judge-advocate should of course be free from all suspicion of bias or prejudice; and should possess some acquaintance with military law and the rules of evidence.

Substitute on
death,
illness, or
absence of

100. If the judge-advocate dies, or from illness, or from any cause whatever is unable to attend, the court shall adjourn, and the president shall report the circumstance

to the convening authority ; and a person not disqualified to be judge-advocate may be appointed by the proper authority, who shall be sworn, and act as judge-advocate for the residue of the trial, or until the judge-advocate returns.

Sworn.—See Rules 27, 28. See Appendix II, Form of Proceedings, para. (5), p. 521.

101. The powers and duties of a judge-advocate are as follows:—

Powers and
duties of
judge-advocate.

- (A) The prosecutor and the prisoner respectively, are at all times, after the judge-advocate is named to act on the court, entitled to his opinion on any question of law relative to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court :
- (B) At a court-martial he represents the Judge-Advocate-General :
- (C) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he will inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and will give his advice on any matter before the court.
- (D) Any information or advice given to the court on any matter before the court will, if he or the court desires it, be entered in the proceedings.
- (E) At the conclusion of the case he will, unless both he and the court consider it unnecessary, sum up the evidence and give his opinion upon the legal bearing of the case before the court proceed to deliberate upon their finding :
- (F) Upon any point of law or procedure which arises upon the trial which he attends, the court should be guided by his opinion, and not overrule it, except for very weighty reasons. The court are responsible for the legality of their decisions, but they must consider the grave consequences which may result from their disregard of the advice of the judge-advocate on any legal point. The court, in following the opinion of the judge-advocate on a legal point, may record that they have decided in consequence of that opinion.
- (G) The judge-advocate has, equally with the president the duty of taking care that the prisoner does not suffer any disadvantage in consequence of his position as prisoner, or of his ignorance or incapacity to examine or cross-examine witnesses

or otherwise, and may, for that purpose, with the permission of the court, call witnesses and put questions to witnesses, which appear to him necessary or desirable to elicit the truth:

(H) In fulfilling his duties the judge-advocate will be careful to maintain an entirely impartial position.

(F) With reference to this paragraph, it is to be observed that the members of the court may become responsible to the ordinary civil courts of law in the event of the prisoner being unjustly convicted. See M.M.L., ch. VIII. This liability may turn on the question whether they exercised a *bonâ fide* judgment; and though they are not bound by the opinion of the judge-advocate, yet disregard of his advice, if that advice is right, might be held to show that they did not exercise a *bonâ fide* judgment. On the other hand, the adoption of the advice of the judge-advocate, even if wrong, may, in a doubtful case, practically exonerate the members from liability.

(G) *Permission of the court.*—This should never be refused unless the court consider that the judge-advocate is acting improperly, or in such a manner as to obstruct the proceedings, and they should always record their reasons for refusing the permission.

As to the duty of the president towards the prisoner see note on Rule 58 (B).

Exception from Rules.

Suspension
of rules on
the ground
of military
exigencies or
the necessities
of
discipline.

102. Where it appears to the officer convening a court-martial, or to the senior officer on the spot, that military exigencies, or the necessities of discipline, render it impossible or inexpedient to observe any of the rules 5, 8, 13 and 14, he may, by order under his hand, make a declaration to that effect, specifying the nature of such exigencies or necessities, and thereupon the trial or other proceeding shall be as valid as if the rule mentioned in such declaration had not been contained herein; and such declaration may be made with respect to any or all of the rules above in this rule mentioned in the case of the same court-martial.

Provided that the prisoner shall have full opportunity of making his defence, and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies or necessities.

The nature, and not merely the existence of military exigencies, or the necessities of discipline, must be stated in the order.

The power conferred by this rule should hardly ever be exercised, except when on active service, and then only if absolutely necessary. It may, however, occasionally be necessary to resort to it on the eve of embarkation, or on the line of march, or possibly in an extreme case, where the necessities of discipline require a very speedy trial and punishment.

In exercising the power under the rule, the officer must consider whether it is necessary to dispense with all the rules mentioned. For example, the observance of Rule 5 may be practic-

able, although that of Rule 14 is not so. If Rules 5 and 8 are suspended by the order, some means must be taken to inform the prisoner of the charge, and of the names of the witnesses, and of the nature of their evidence, and the court must take care that the prisoner is not prejudiced by reason of the suspension, as, for instance, by not having received any summary of evidence.

The power of dispensing with Rule 13 is only intended to be exercised, in case it is necessary to try a prisoner before he can communicate with any witness or friend at a distance. That rule should never be dispensed with except in extreme cases, and even then the prisoner must be allowed free communication with any witness or friend on the spot.

Full opportunity of making his defence.—The prisoner will not have this opportunity unless he receives in reasonable time the information mentioned above; and if he requests a reasonable adjournment in order to consider the witnesses' evidence, or to acquaint himself with the charge, or requests the postponement of the cross-examination of a witness, the court should grant the request, and may adjourn for the purpose. A refusal might be held to be non-compliance with this proviso, and thus to invalidate the trial. For the same reason the court, even in the absence of any such request, must take care that the prisoner is not prejudiced by being taken by surprise, either by the charge or the evidence of the witnesses.

Rule 14 (C) and (D) must always be complied with, and Rule 14 (A) and (B), if not complied with within the time there mentioned, should be complied with as long as possible before the assembly of the court.

Field General Court-Martial.

103. In the case of a field general court-martial under section 49 of the Army Act, 1881, the foregoing rules applicable to a general court-martial shall apply, subject to the following exceptions and provisions:—

Application of rules to field general court-martial under s. 49.

- (A) The interval between the prisoner being informed of the charge under Rule 14, and his arraignment, shall, when that rule cannot be complied with, be as long as practicable, having regard to the exigencies of the service.
- (B) Rules 5, 8, 20, 21, and 102 shall not apply.
- (C) Rules 95 and 96 shall apply as if the court were a district court-martial.
- (D) Rule 19 (B) and (c) shall not apply, except that an officer shall be disqualified for serving on the court if he is the prosecutor or is a witness for the prosecution or has a personal interest in the case.
- (E) A judge-advocate shall not be required, and the president may do anything authorised by these rules to be done in the case of a court-martial by the judge-advocate.

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- (F) On a plea of guilty, the court shall proceed as in the case of a regimental court-martial.
- (G) Rules 13, 38, 39, 40, and 63 shall apply only so far as it appears to the convening officer or the court to be practicable, having due regard to the exigencies of the service : provided that the prisoner shall have full opportunity of making his defence, and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies.

As the sole object of this rule is to enable the court, if necessary, to be held without any delay, the rules which do not apply must be observed as far as possible.

Thus, the prisoner should be informed as far as possible beforehand of the names of the witnesses who are to be called, and the nature of the evidence which they will give, and the court will take great care that the prisoner is not prejudiced by being taken by surprise by the witnesses, or by the charge.

(A) As to the suspension of Rule 14, the note on Rule 102 will apply.

(B) The spirit of Rules 20 and 21 should also be complied with, so far as practicable, in constituting the court. If possible, the time of trial should be the same as in the case of other courts-martial.

(D) The officer who convened the court should not serve on the court if it can be avoided.

Although the other disqualifications mentioned in Rule 19 do not apply, the court should always, whenever it is practicable, be constituted of officers who are not disqualified under that rule, and in particular care should be taken to constitute a court with officers of more than three years' standing whenever they are available.

(G) Rules 39 and 40 should never be departed from if it can possibly be helped, and the court must take great care that the prisoner is not prejudiced by any non-observance of the ordinary rules of a court-martial.

Opportunity of making his defence.—See note on Rule 102.

Summary Court-Martial.

The foregoing rules shall not, save as hereinafter mentioned, apply to summary courts-martial, which shall be subject to the following rules :—

Convening
of summary
court-
martial.

104. (A) A summary court-martial may be convened by the commanding officer of any corps or portion of a corps on active service, or by any officer in immediate command of a portion of a body of forces on active service.

(B) Where it appears to any such officer on complaint, or otherwise, that a person subject to military law has committed an offence, he may convene a summary court-martial to try such person, if he is satisfied that it is not practicable to try such person by an ordinary court-martial, and—where he is below the rank of field officer and is not a

commanding officer—is further satisfied that it is not practicable to delay the trial for reference to a superior officer.

105. (A) Not less than three officers must be appointed.

Composition
of summary
court-
martial.

(B) If the convening officer is of opinion that three other officers are not available to form the court, he may appoint himself president of the court; but if he is of opinion either that three other officers are available, or that although three other officers are not available he himself is by reason of his position as confirming officer or otherwise not available, he should appoint another officer to be president, who may be of any rank, but should not be below the rank of captain, unless in the opinion of the convening officer an officer of that or some higher rank is not available.

(c) The officers should have held commissions for not less than one year, and if in the opinion of the convening officer any officers are available who have held commissions for not less than three years, he should appoint those officers in preference to officers of less service.

(d) The provost-marshal, an assistant provost-marshal, and an officer who is prosecutor or a witness for the prosecution, must not be appointed a member of the court, but save as aforesaid any available officers may be appointed to sit.

(A This gives the ordinary rule for the constitution of a summary court-martial. In case of military exigencies, two officers only may be appointed. Rule 106 (B).

106. (A) The court may be convened and the proceedings conducted in accordance with Rule 103, and that rule shall apply in all respects as if the court-martial were a field general court-martial.

Further provisions as to
summary
court-
martial.

(B) Where the convening officer is satisfied that military exigencies or other circumstances prevent compliance with Rule 103, and that it is not practicable to delay the trial for the purpose of such compliance, then

(a.) If, in his opinion, three officers are not available, two may be appointed; and

(b.) The court may be convened, and the proceedings of the court recorded in accordance with the form in the Second Appendix to these rules.

(c) If it further appears to the convening officer that military exigencies or other circumstances prevent the use of such form, the court-martial may be convened and the proceedings carried on without any writing, except that such written record as seems practicable must be kept by the provost-marshal or assistant provost-marshal, if present, or if not, by the president and the officer charged with the

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promulgation, stating as near as may be the particulars set forth in the form, and stating at least the name (or, if the name is not known, the description) of the offender, the offence charged, the finding, the sentence, and the confirmation.

(D) The convening officer will report to superior authority for the information of the officer, who, if a summary court-martial had not been convened, would have had power to convene a general court-martial to try the prisoner, the military exigencies or other circumstances which prevented compliance with Rule 103, or the use of the form in the Second Appendix.

In ordinary cases, the convening and procedure of a summary court-martial will be the same as for a field general court-martial, but this does not make the composition and jurisdiction of the summary court-martial the same as that of the field general court-martial under the Army Act, s. 49.

The notes to Rules 102 and 103 must be observed as respects summary courts-martial.

As there mentioned, the rules which apply to ordinary courts-martial must not be dispensed with further than is necessary; and similarly under this rule, the exceptional course which is allowed to meet military exigencies and other circumstances must not be adopted further than is absolutely necessary.

Under Rule 103 (D) the disqualification of a convening officer to sit on the court he convenes does not apply, and therefore an officer who convenes a summary court-martial may, if no other officer is available (see Rule 121), sit on it. And if under this rule (B) the court consists of only two officers, the convening officer may be one of those two.

A departure from the rule requiring three officers and excluding the convening officer should, as in the case of any other departure from rules, only be adopted if absolutely necessary.

Available.—See Rule 121. Form, see p. 535.

Charge.

107. The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Army Act, 1881.

Trial of
several
prisoners.

108. The court may be sworn at the same time to try any number of prisoners then present before it, but, except so far as prisoners are tried together for an offence committed collectively, the trial of each prisoner will be separate.

Challenge.

109. (A) The names of the president and members of the court will be read over in the hearing of the prisoners, and they will be asked if any of them objects to be tried by any of those officers.

(B) If any prisoner objects to an officer, and any member of the court thinks the objection reasonable, steps will be taken to try the prisoner before a court composed of officers against whom he has no reasonable objection.

Swearing
court.

110. The president will administer to the other members

of the court, and a member of the court, when sworn, will administer to the president the following oath :—

You, , do swear that you will well and truly try the prisoner [*or* prisoners] before the court according to the evidence, and that you will duly administer justice according to the Army Act now in force, without partiality, favour, or affection, and you do further swear that you will not divulge the sentence of the court until it is duly confirmed, and you do further swear that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you God.

111. When the court are sworn, the president will state to the prisoner then to be tried the offence with which he is charged, with, if necessary, an explanation giving him full information of the act or omission with which he is charged, and will ask the prisoner whether he is guilty or not of the offence. Arraign-
ment.

112. If a special plea to the general jurisdiction is offered by the prisoner, and is considered by the court to be proved, the court shall report the same to the convening officer. Plea to
jurisdiction.

See Rule 34, and note.

113. (A) The witnesses for the prosecution will be called, and the prisoner will be allowed to cross-examine them, and to call any available witnesses for his defence. Witnesses.

(B) The following oath shall be administered by a member of the court to every witness :—

The evidence which you shall give before this court shall be the truth, the whole truth, and nothing but the truth,
So help you God.

114. (A) A member of the court or a witness may take an oath with such ceremonies, and in such manner as makes the same binding on his conscience, and the words “you” and “So help you God” may be varied or omitted for the purpose. Mode of
swearing
witness, and
solemn de-
claration.

(B) A member of the court or a witness who objects to take an oath, or is objected to as incompetent to take an oath, may be allowed by the court, in lieu of an oath, to make a solemn declaration, which will be in the same form as the oath, with the substitution of “I” for “you,” and with the omission of “You do swear that” and “So help you God,” and with the substitution or addition, where necessary, of “I do solemnly declare that.” Solemn de-
claration by
witness.

See Rule 30, and note.

115. The prisoner will be asked what he has to say in his defence, and shall be allowed to make his defence. Defence.

Acquittal.

116. (A) In the case of an equality of votes on the finding, the prisoner will be acquitted.

(B) The finding of acquittal requires no confirmation, and, if it relates to all the offences charged against a prisoner, will be declared at the time of the finding, and the prisoner will thereupon be discharged from custody.

Sentence.

117. (A) The court, if consisting of three or more officers may award any sentence which a general court-martial can award; but if the court pass sentence of death, the whole court must concur.

(B) The court, if consisting of two officers, may award any sentence authorised for the offence, not exceeding summary punishment, or two years' imprisonment with hard labour.

(C) Any recommendation to mercy will be attached to the proceedings, and communicated to the prisoner, together with the finding and sentence.

General provisions as to votes and powers of court.

118. (A) Except as provided by Rules 109 (B), 116, and 117, every question will be determined by the majority of votes, and in case of equality the president shall have a second or casting vote.

(B) If, after the commencement of the trial; the court consider that any prisoner named in the schedule to the order convening the court should be tried by an ordinary court-martial, the court may strike the name of that prisoner out of the schedule.

(C) The proceedings shall be held in open court, in the presence of the prisoner, except on any deliberation among the members, when the court may be closed.

(D) The court may adjourn from time to time, and may, if necessary, view any place.

Confirmation.

119. (A) Except in the case of acquittal, the finding and sentence of the court shall be valid only in so far as the same are confirmed by proper military authority.

(B) The provost-marshal or an assistant provost-marshal cannot confirm the finding or sentence of the court.

(C) A prosecutor of a prisoner or a member of the court trying a prisoner cannot confirm the finding or sentence of the court as regards that prisoner, except that if a member of the court trying a prisoner would otherwise under these rules have power to confirm the sentence, and is of opinion that it is not practicable to delay the case for the purpose of referring it to any other officer, he may confirm the finding and sentence.

(D) Where a sentence of death or penal servitude has been passed, the sentence shall not be carried into effect until confirmed by a general or field officer commanding the force with which the prisoner is present at the date of his sentence;

Provided that in case of a sentence of death it shall be

the duty of any such officer, who is not in chief command of the forces in the field comprising the said force with which the prisoner is present, to reserve the sentence for confirmation by a superior officer ; except where he is of opinion that, by reason of the nature of the country, the great distance, or the operations of the enemy, it is not practicable to delay the case for confirmation by the said officer in chief command, or by any officer superior to himself in command of the said force with which the prisoner is present, and in that case he may confirm the same.

(E) Subject to the exceptions in (B), (C), and (D), the finding and sentence of a summary court-martial as regards any prisoner may be confirmed by any general or field officer, or by the commanding officer of a corps or portion of a corps, or by any officer not qualified as aforesaid, but being in immediate command of a detachment or portion of the body of the forces with which the prisoner is present ; provided that—

- (1) It shall be the duty of any such officer in immediate command as aforesaid, if not otherwise qualified to confirm, to reserve for confirmation by superior authority a finding and sentence, except where he is of opinion that it is not practicable to delay the case for that purpose ; and
- (2) It shall be the duty of an officer who has not power to confirm the finding and sentence of a general or district court-martial to reserve (save as provided by (F) for confirmation by an officer having that power, a sentence awarding a punishment in excess of that which a regimental court-martial can award.

(F) Where the punishment awarded by a sentence is such that an officer is required to reserve the same for confirmation, that officer may nevertheless, if he thinks fit, confirm the sentence, if in confirming it he mitigates, remits, or commutes the punishment, so as to make it a punishment a sentence for which he has power to confirm.

(G) Any officer may, if he thinks it desirable, reserve any finding or sentence for confirmation by superior authority.

(H) An officer not having power to confirm the finding and sentence of a district court-martial, shall not have power to commute summary punishment into imprisonment for any period exceeding forty-two days.

(I) A confirming authority shall not send back a finding and sentence for revision more than once, and on any

revision the court shall not take further evidence nor increase the sentence.

Practicable.—See Rule 121.

(A) This is the same provision as is enacted in the Army Act, s. 54 (6) for ordinary courts-martial (see note to that section, and ch. III, para. 5).

(B-E) The general effect is this. The ordinary rule for the confirmation of the finding and sentence of a summary court-martial, where it is not a sentence of death or penal servitude, will be (as laid down in (E) that it is confirmed by some general or field officer, or by some commanding officer, as defined by Rule 121 (B), i.e., an officer having power to tell off the prisoners under his command; but as some other officer may be in command of an outpost where an immediate example is required, that officer is allowed in such a case to confirm if delay is not practicable (E (1)).

An officer, however, cannot confirm a sentence exceeding six weeks' imprisonment, unless he has power to confirm sentences of general or district courts-martial (E (2)); but if the sentence was (say) for three months' imprisonment, an officer can mitigate the sentence to some punishment not exceeding six weeks' imprisonment, and can then confirm it.

A sentence of death or penal servitude can only be confirmed by the general or field officer in command of the forces with which the prisoner is present, and even that officer, if not in chief command of the forces in the field, must reserve a sentence of death for confirmation by the officer in chief command. If, however, communication with that officer is impracticable, or so difficult as to cause too great delay, a sentence of death may be confirmed by the officer of highest rank in the force with whom communication can be had (D).

(G) enables any officer to refer a confirmation to superior authority, or to confirm the finding and refer the sentence.

(I) applies the law enacted for ordinary courts-martial by Army Act, s. 54 (2).

(B) and (C) give effect to the ordinary rule that a prosecutor or a member of the court is not to confirm, and the rule is extended to the provost-marshal and his assistant as if he were the prosecutor.

**Application
of rules.**

120. The foregoing rules—53 (Mitigation of sentence on partial confirmation), 55 (Confirmation notwithstanding informality in or excess of punishment), 95 (Transmission of proceedings after finding), 96 (Preservation of proceedings), 97 (Rate of payment for copies of proceedings), and 98 (Loss of proceedings)—shall, so far as practicable, apply as if a summary court-martial were a district court-martial.

Definitions.

121. (A) In the rules with respect to summary courts-martial, unless the context otherwise requires, the expressions "practicable" and "available" mean respectively practicable and available, having due regard to the public service.

(B) The expression "commanding officer of a corps or

portion of a corps" means the officer whose duty it is under the provisions of Her Majesty's Regulations, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against any of the persons belonging to such corps or portion of a corps who are present under his command, of having committed an offence, that is, to dispose of the charge on his own authority, or to refer it to superior authority.

122. Any statement in an order convening a summary court-martial as to the opinion of the convening officer, and any statement in the minute confirming the finding or sentence of a summary court-martial as to the opinion of the confirming officer, shall be conclusive evidence of such opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated.

Evidence of
opinion of
convening
and con-
firming
officer.

PART II.—MISCELLANEOUS.

Regulations for Courts of Inquiry, other than Courts of Inquiry held under Section 72 of the Army Act, 1881.

Courts of
inquiry.

123. (A) A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps.

(B) The court may be composed of any number of officers of any rank, and of any branch or department of the service, according to the nature of the investigation.

(C) The court will be guided by the written instructions of the officer who assembled the court. The instructions should be full and specific, and must state the general character of the information required from the court in their report.

(D) A court of inquiry has no judicial power, and is in strictness not a court at all, but an assembly of persons directed by a commanding officer to collect evidence with respect to a transaction into which he cannot conveniently himself make inquiry.

(E) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry.

(F) Whenever any inquiry affects the character of an officer or soldier, full opportunity must be afforded to such officer or soldier of being present throughout the inquiry, and of making any statement he may wish to make, and of cross-examining any witness whose evidence, in his opinion, affects his character, and producing any witnesses in defence of his character.

(G) A court of inquiry has no power to compel witnesses to attend, and the evidence cannot be taken on oath.

(H) A court of inquiry will give no opinion on the conduct of any officer or soldier, and the proceedings of a court of inquiry cannot be given in evidence against an officer or soldier. Nevertheless, in the event of an officer or soldier being tried by court-martial in respect of any matter or thing which has been reported on by a court of inquiry, such officer or soldier shall be entitled to a copy of the proceedings of the court of inquiry.

(I) The whole of the proceedings of a court of inquiry will be forwarded by the president to the commanding officer who assembled the court, and that commanding

officer will, on his own responsibility, form such opinion as he thinks just.

(J) When, in consequence of the assembling of a court of inquiry, an opinion adverse to the character of any officer or soldier is formed by the officer who determines the case so inquired into, whether such officer be the officer who assembled the court or a superior officer to whom the case has been referred by such last-mentioned officer, such adverse opinion shall be communicated to the officer or soldier against whom it has been given.

(K) The court may be re-assembled as often as the convening officer may direct, for the purpose of examining additional witnesses or recording further information.

(L) Members of a court of inquiry in a case which is subsequently the subject of a court-martial, are not to be detailed as members of the court-martial.

See generally as to courts of inquiry, Q.R. 885, Sect. VI, paras. 118-125.

As to privilege of report of court, see M.M L., chapter VIII, para. 77; and as to privilege of witnesses, *ib.* para. 85.

(L) See Rule 19 (B) (iii).

Regulations for Courts of Inquiry under Section 72 of the Army Act, 1881, for the purpose of determining the illegal Absence of Soldiers.

124. (A) A court of inquiry under Section 72 of the Army Act, 1881, will, when assembled, require the attendance of such witnesses as they think sufficient to prove the absence and other facts specified as matters of inquiry in the said section. Courts of inquiry as to illegal absence under s. 72.

(B) They will take down the evidence given them in writing, and at the end of the proceedings will make a declaration of the conclusions at which they have arrived in respect of the facts they are assembled to inquire into.

(C) The commanding officer of the absent soldier will enter in the regimental books a record of the declaration of the court, and the original proceedings will be destroyed.

(D) The court of inquiry will examine all witnesses who may be desirous of coming forward on behalf of the absentee, and in making their declaration, will give due weight to the evidence of such witnesses.

(E) A court of inquiry will administer the same oath or solemn declaration to the witnesses as if the court were a court-martial, but the members of such court will not themselves be sworn.

See Q.R., 1885, Sect. VI, para. 121.

(E) *Same oath.*—See Rule 50.

Explanation of "Prescribed" and "Commanding Officer."

Prescribed
officer for
committing,
removing,
and com-
muting
authority.

125. (A) The committing authority under ss. 59, 60, 61, 64, and 65 of the Army Act, 1881, shall include the officer commanding the military district or station where the military convict or military prisoner may for the time being be, and when the convict or prisoner is in Ireland the general commanding the forces in Ireland; but any officer in this rule mentioned shall not, by virtue of this rule, be a discharging authority.

(B) The removing authority under section 64, and the competent military authority under section 67 of the said Act shall, as regards a military prisoner for the time being in Ireland, include the general commanding the forces in Ireland.

(C) The general commanding the forces in Ireland, as respects a military prisoner undergoing his sentence in Ireland, and the adjutant-general, as respects persons undergoing sentence in any place whatever, shall be authorities having power under section 57 of the Army Act, 1881, to mitigate, remit, or commute punishment awarded by sentence of a court-martial.

Prescribed
procedure
for court of
inquest
(India) under
s. 133.

126. When a court of inquest is required to be convened by the commanding officer under section 133 of the Army Act, 1881, the court shall be convened and inquest held in manner following:—

- (a) The commanding officer of the station will order the court to assemble.
- (b) The court will consist of three officers and of a medical officer.
- (c) The court shall not take evidence on oath, and shall warn every person who is accused or suspected that he is not required to give evidence criminating himself, but that any statement or evidence he gives may be used against him in the event of any further proceedings being instituted.
- (d) The court after hearing the evidence will report to the officer commanding the station the evidence as to the cause of the death, together with the written opinion of the medical officer of the court on his examination of the body as to the cause of death.
- (e) The commanding officer will, as soon as practicable, forward the report of the court to the nearest civil magistrate having authority to hold an inquest on death, who may proceed thereon as if he had himself held the inquest.

Prescribed
officer for
competent

127. The competent military authority in Part II of the Army Act, 1881, includes in addition to the Commander-

in-Chief and Adjutant-General, in section 101 of that Act mentioned, the following officers, namely :—

military
authority
(s. 101).

- (i) In India,
The Commander-in-Chief of the forces in India, and the Commander-in-Chief of the forces of any presidency in India.
- (ii) In any place situate out of India, and out of the United Kingdom, the general or other officer commanding the forces in such place. In addition to the above-mentioned officers it also includes :—
- (iii) For the purpose of sections 80, 82, 84, and 85 of the said Act, the commanding officer of the soldier, and every officer superior in command to that commanding officer, and not hereinbefore included ;
- (iv) For the purposes of any transfer by consent under section 83 (2) the general commanding the forces in Ireland and the general commanding a military district in the United Kingdom.
- (v) For the purposes of section 99 any officer having power to convene a district court-martial for the trial of the soldier.
- (vi) It also includes such officer as may be directed from time to time by Her Majesty's Regulations to perform in any place or for any purpose specified in that behalf the duty of the competent military authority.

128. The expression "commanding officer," as used in the sections of the Army Act, 1881, relating to *Courts-Martial*, to the "*Execution of Sentence*," and to the "*Power of commanding officer*," and in the provisions consequential thereon, and in these rules, means, in relation to any person, the officer whose duty it is, under the provisions of Her Majesty's Regulations, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against that person of having committed an offence, that is, to dispose of it on his own authority or refer it to a superior authority.

Definition of
"command-
ing officer."

Every officer, however temporary or casual his command over a prisoner may be, will be within this definition if the custom of the service enables him to tell off the prisoner. In all of these rules "commanding officer" has the meaning given to it by this rule.

In the portions of the Army Act not above mentioned, "commanding officer" is not limited to the commanding officer as defined by this rule, though the commanding officer as so defined is often (see notes) the proper officer to act.

It is laid down in Q.R., 1885, Sect. VI, paras. 13, 14, that the commanding officer of a detachment has the same power of

awarding summary punishment as the commanding officer of the corps, subject to any restrictions that may be imposed by superior authority.

Colonial Prisons.

Committal
and removal
of prisoners
in one colony
to authorised
prisons
in other
colonies.

129. (A) A military prisoner who has been sentenced to imprisonment in any place out of the United Kingdom may, if he is in any place mentioned in the first column of the following table, be committed, or, if he has been committed to prison, be removed, if occasion arises, to a military prison wherever situate, or to an authorised prison situate in any place mentioned opposite thereto in the second column of the following table :—

TABLE.

A military prisoner, sentenced to imprisonment, and being in any place in any of the groups following :—

GROUP I.

(American and Mediterranean.)

Canada.
Prince Edward Island.
Newfoundland.
Bermuda.
British Columbia.
Gibraltar.
Malta.
Cyprus.

May be committed, or, if he has been committed to prison, may be removed, to an authorised prison in—

Any place in Group I (American and Mediterranean); or
In Group III (South African); or
In Group VII.

GROUP II.

(West Indian.)

West Indies, including—
Jamaica.
Turks and Caicos Islands.
Honduras.
Bahamas.
Barbados and Windward Islands.
St. Vincent.
Granada.
Tobago.
St. Lucia.
Antigua and Leeward Islands.
Montserrat.
St. Christopher.
Nevis.
Virgin Islands.
Dominica.
British Guiana.
Trinidad.

Any place in Group II (West Indian); or
In Group I (American and Mediterranean); or
In Group III (South African); or
In Group VII.

TABLE—*continued*.

<p>GROUP III. (South African.)</p> <p>South Africa, including— Cape of Good Hope. Natal. Griqualand West. St. Helena.</p>	<p>Any place in Group III (South African); or In Group I (American and Mediterranean); or In Group V (Australasian); or In Group VII.</p>
<p>GROUP IV. (West African.)</p> <p>West African Colonies, including— Sierra Leone. Gambia. Gold Coast. Lagos.</p>	<p>Any place in Group IV (West African); or In Group I (American and Mediterranean); or In Group II (West Indian); or In Group III (South African); or In Group VII.</p>
<p>GROUP V. (Australasian.)</p> <p>Australian Colonies, including— New South Wales. Queensland. Tasmania. South Australia. Victoria. Western Australia. New Zealand. Fiji. Falkland Islands.</p>	<p>Any place in Group V (Australasian); or In Group I (American and Mediterranean); or In Group III (South African); or In Group VII.</p>
<p>GROUP VI.</p> <p>India, as defined by the Army Discipline and Regulation Act, 1879, and including— Aden and Perim. Mauritius. Ceylon. Hong Kong. Straits Settlements. Labuan.</p>	<p>Any place in Group VI; or In Group I (American and Mediterranean); or In Group III (South African); or In Group V (Australasian); or In Group VII.</p>
<p>GROUP VII.</p> <p>Heligoland. Channel Islands and Isle of Man.</p>	<p>Any place in Group VII.</p>

This rule shall not authorise any removal from a prison in the United Kingdom to a prison elsewhere.

This rule is rendered necessary by Army Act, s. 65 (1), (c), under which a prisoner can only be confined in any authorised prison in any part of Her Majesty's dominions other than that in which the sentence was passed, and other than the United Kingdom, if the prison is prescribed.

The main object of this rule, as regards a colony where there is no military prison, is to enable a prisoner to be removed with or

sent to his regiment, if the regiment is serving in that colony, but not to allow prisoners in any other case to be sent to that colony. No prisoners will be committed or removed to a colony where troops are not serving, without the consent of the government of that colony.

Prisoners will not, except for special reasons which must be at once reported to a superior authority for the information of the Secretary of State for War, be removed to a *military* prison in any place if they could not be removed under this rule to an *authorised* prison in that place.

The Isle of Man, Channel Islands, and Cyprus are declared to be colonies for the purpose of imprisonment by the Army Act, s. 187 (2), 190 (23).

PART III.

SUPPLEMENTAL.

130. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office for the purpose of these rules, may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service. Exercise of powers vested in holder of military office.

See Army Act, 1881, s. 171.

131. In any case not provided for by these rules such course will be adopted as appears best calculated to do justice. Cases unprovided for.

132. (A) The forms in the appendices to these rules should be followed in all cases in which they are applicable, and when used shall be valid in law, but a deviation from such forms will not, by reason only of such deviation, render any charge, warrant, order, proceedings, or other document invalid. Forms in Appendices.

(B) An omission of any such form will not, by reason only of such omission, render any act or thing invalid.

(C) The notes to and instructions in the forms will be considered as instructions which it is expedient to follow in all cases to which such notes and instructions apply.

133. In these rules, unless the context otherwise requires— Definitions.

(A) The expression "proper military authority," when used in relation to any power, duty, act, or matter, means such military authority as, in pursuance of Her Majesty's Regulations or the custom of the service, exercises or performs that power or duty or is concerned with that act or matter.

(B) The expression "commander-in-chief" means, as regards India, the Commander-in-Chief in India.

(C) The expression "Army Act, 1881," includes any Act, whether passed before or after the date of these rules, which amends or applies that Act; also any Act, whether passed before or after the date of these rules, which enacts an offence which is triable by court-martial.

(D) Other expressions have the same meaning as if these rules formed part of the Army Act, 1881, and accordingly words in the singular number include the plural, and words in the plural number include the singular, and the masculine gender includes the feminine gender.

(A.M.L.)

(C) See, for instance, the Volunteer Act, 1863, the Yeomanry Acts, the Reserve Forces Act, 1882, and the Militia Act, 1882.

(D) See particularly s. 190, and note thereto. This rule does not extend to proceedings and commitments and other documents, so that it will be necessary, for instance, to specify calendar months. See Q.R., 1885, Sect. VI, para. 101.

Construction
of rules.

134. (A) Time, for the purposes of any proceeding or other matter under these rules, shall be reckoned exclusive of Sunday, Good Friday, and Christmas Day, but any time reckoned for the purposes of Rule 6, or of any punishment or of any deduction of pay, shall include those days.

(B) Any report or application directed by these rules to be made to a superior authority, or proper military authority, shall be made in writing through the proper channel, unless such authority, on account of military exigencies or otherwise, dispenses with the writing.

(C) These rules shall apply to a person subject to military law as an officer in like manner, so nearly as circumstances admit, as if he were an officer, and to a person subject to military law as a soldier in like manner, so nearly as circumstances admit, as if he were a soldier, subject nevertheless to the restrictions contained in the Army Act, 1881, and to this qualification—that nothing in these rules shall confer on any person not an officer or soldier any jurisdiction or power as an officer or soldier.

(D) Nothing in these rules shall be construed to be contrary to or inconsistent with any provision of the Army Act, 1881.

(C) *Subject to military law as an officer.*—See Army Act, s. 175 (7), (8), 176, (9), (10).

Application
of rules to
Channel
Islands, and
Isle of Man.

135. These rules shall, save as otherwise expressly provided, apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom.

The Channel Islands and Isle of Man are declared to be Colonies for the purpose of imprisonment. See Army Act, s. 187 (2), and Rule 129.

Extent of
application
of rules.
Short title.

136. These rules shall apply in every place, whether within or without Her Majesty's dominions.

137. These rules may be cited as the Rules of Procedure, 1881.

Commence-
ment of
rules.

138. (A) The foregoing rules, so far as they relate to summary courts-martial, shall come into operation in any place at the date thereof, or if that date is prior to the commencement of the Army Discipline and Regulation (Annual) Act, 1881, in that place, then on that commencement, and on such rules coming into operation in any place the rules in force with respect to field general

courts-martial under section 72 of the Army Discipline and Regulation Act, 1879, shall determine in that place.

(b) Rule 125, and so much of the foregoing rules as relate to the forms in the Third Appendix, shall come into operation in any place on the commencement in that place of the Regulation of the Forces Act, 1881, and so much of any rules then in operation as are inconsistent therewith shall determine in that place.

(c) The foregoing rules, so far as they are not already in operation on the 1st day of January, 1882, shall come into operation on that day, except in any place in which that day precedes the commencement of the Regulation of the Forces Act, 1881, in that place, in which case these rules shall come into operation in that place on that commencement, and on the day on which these rules come into operation in any place the rules made in pursuance of the Army Discipline and Regulation Act, 1879, so far as they are then in force, shall determine.

(d) Any court-martial, proceeding, or thing held, done, or commenced under any rules determined in pursuance of this rule, shall be as valid, and may be completed and carried into effect as if the said rules were still in force.

Her Majesty has made the foregoing rules in pursuance of the Army Act, 1881, and those rules will therefore be observed by all persons concerned.

(Signed)

HUGH C. E. CHILDERS.

War Office,

29th August, 1881.

The foregoing rules are to be observed by the Royal Marine Forces when subject to the Army Act, 1881, until further rules are made in pursuance of Section 70 of the said Act.

(Signed)

NORTHBROOK.

A. COOPER-KEY.

Admiralty,

25th November, 1881.

Army Procedure Rules.

FIRST APPENDIX.

FORMS OF CHARGES.

NOTE AS TO USE OF FORMS OF CHARGES.

App. I. (1.) Every charge-sheet will begin as shown in the forms in Part I of the forms of charges, which are given as examples.

The description of an officer or soldier of the regular forces by his rank and corps is a sufficient averment that he is an officer or soldier, and that he is amenable to military law. In other cases, words must be added to show that the person is amenable to military law. (See Rule 10.)

(2.) The commencement of the charge-sheet (according to the form in Part I) will be followed by the charge or charges.

(3.) Each charge will consist of two parts: a statement of the offence, and a statement of the particulars. (Rule 11 (B).)

(4.) The statement of the offence will be in one of the forms in Part II.

(5.) Where two or more words or expressions occur in Part II, bracketed together one under the other, the particular word or expression should be used which most accurately describes the offence which appears to the officer framing the charge to be capable of proof by legal evidence.

(6.) Where the officer framing the charge is doubtful whether the offence so capable of being proved by legal evidence is more accurately described by one word, or expression, or by another, he may frame two or more alternative charges, each charge containing one of the words or expressions which appear to the officer to be applicable to the facts as capable of proof.

(7.) Where two or more of the words or expressions bracketed together appear, when coupled together with the word "and," accurately to describe the offence, the charge may couple together such words or expressions; but in no case must the charge couple with the word "or" two or more of the words or expressions bracketed together. (See Rule 11 (A).)

(8.) For example, a man may be charged with making away with his arms, ammunition, *and* necessities; but a charge for making away with his arms, ammunition, *or* necessities will be a bad charge.

(9.) A man should not be charged, however, with making away with by pawning *and* selling his arms and necessities, as in such case he is charged with at least two distinct offences, which ought to be included in at least two distinct charges, one for making away with by pawning his arms and necessities, the other for making away with by selling his arms and necessities; but he may, if desirable, be charged in four distinct charges: one for pawning his arms, another for pawning his necessities, a third for selling his arms, and a fourth for selling his necessities.

(10.) In the former example (para. 8) the offence is the sale of some article which he is prohibited from selling, and is the same offence although committed in respect of different articles. In the second example (para. 9) there are two distinct offences of making away with his articles—(a) by pawning, (b) by selling—although committed in respect of the same objects—arms and necessities.

(11.) In a few cases, shown in italics bracketed thus [] (as for instance, in s. 4 (1 *b*), s. 6 (7) (8) and 12),* and s. 24), words may be inserted in the charge which are not in the Act. In these cases the Act contains a general expression such as “other person,” or “other place,” or “other means,” and the officer framing the charge must omit these words, and insert a description of the person, place, or means.

(12.) Words inserted in brackets, thus [], without italics, must be adopted or not according to circumstances. For example, if the offender was not on active service, the words, “when on active service” must be omitted.

(13.) In some cases (for example, s. 10 (4), s. 14, s. 15 (3), s. 16, and ss. 18, 27 (3) (4), and 37), the offence can only be committed by an officer or by a non-commissioned officer or by a soldier. The forms of charge do not contain any reference to this fact, inasmuch as it will appear from the commencement of the charge whether the prisoner is or is not an officer, non-commissioned officer, or soldier, and therefore capable of committing the offence. Care, however, must be taken not to charge an officer with an offence which a soldier only can commit, nor a soldier with an offence which an officer only can commit. In some cases the offence, even though not expressed in the Act to be limited to an officer or soldier, can, from the nature of

* *Note.*—The numbers (7), (8), and (12), appear to refer to s. 6 (1), (e), (g), (h).

App. I. things, only be committed by an officer or soldier. For example, the offence in s. 4 (1) (a) can only be committed by an officer, while the offence of losing regimental necessaries (s. 24) can only be committed by a soldier.

(14.) The statement of the offence in each charge will be followed by the appropriate statement of particulars, commencing with the words "in that he," &c., or "in having," &c., and stating in brief ordinary language what the prisoner is alleged to have done.

(15.) The words "in that he" will be followed by the verb in the past tense; the words "in having" will be followed by the past participle. The sentence stating the particulars will be framed more easily sometimes in the one form, sometimes in the other.

(16.) In the case of several charges, the particulars in one charge may refer to the particulars in another (Rule 11 (E)); as, for, example, "in having done the acts alleged in the particulars to the first charge," or "in that, at the place and time aforesaid, he was deficient in the necessities above mentioned in the second charge, which it was his duty to have." If the prisoner is acquitted on any charge in which full particulars were set out, and is convicted on a charge which referred to those particulars, the particulars referred to must be treated as having been set out in full in the charge on which the prisoner is convicted, and must be set out in full in any record of conviction in which the particulars are set out.

(17.) The statement of particulars should specify all the ingredients necessary to constitute the offence: for example, if the charge is under s. 9 (2), for disobeying a lawful command, the "particulars" must state the command, and show that it was given by a superior officer, and also how the prisoner disobeyed the command; while, if the charge is under s. 9 (1), the "particulars" should also show how the command was given personally, and how the prisoner showed a wilful defiance of authority.

(18.) The "particulars" should always give a general description of the place where the offence was committed, such as the station or town or "the line of march," and, if it is material to the charge and is known, the exact place. The prepositions "near" or "between" may be used (for instance, "at or near," "between") to assist in describing a place not exactly known, but they must never be used where the exact place is of the essence of the offence.

(19.) The "particulars" should always state the date at which the offence was committed. If the exact date or time is unknown, the offence may be stated as having been committed "on or about" a particular day or time. This must never be done where the time is of the essence of the

offence, as, for example, the case of absence without leave or being drunk on a post. App. I.

(20.) In some cases the offence may be stated with most accuracy as having been committed between two days or between two times ; as, for instance, in the case of absence without leave, or of quitting a post ; in other cases "between" may be used in consequence of the exact day or exact time not being known.

(21.) The words "or near" and "or about" and "between" should never be used unless it is impossible to express the exact place or time, or the exact place or time is clearly unimportant, or unless the word "between" is the most accurate expression of the place or time.

(22.) In many cases, as, for instance, where the prisoner's defence is an alibi, the time and place may be of the utmost importance in proving that alibi, although it is not the essence of the offence.

(23.) There must be added at the end of the "particulars" a statement of any expenses, loss, or damage in respect of which the court-martial will be asked to award compensation under section 137 or 138 (Rule 11 (F)). For example, there may be added to the "particulars" in the case of a charge of fraudulent enlistment, an averment to the effect that the prisoner thereby obtained a free kit, value* pounds, and in the case of a charge under s. 10 (2) or (3), that the prisoner thereby damaged 's coat, to the value of

shillings, and 's watch to the value of shillings ; and other statements may be made, according to the facts.

(24.) If, however, the expenses, loss, or damage were caused by an act or omission which constitutes another offence, separately specified in the Act, that act or omission should be charged as a separate offence ; for example, if a man deserts and is deficient in his regimental necessaries, he should be charged in a separate charge for loss by neglect of his necessaries. It would not be proper to state it as a consequence of the desertion, or to award compensation for it upon a conviction for desertion only.

(25.) A charge for an offence under the Acts relating to the auxiliary forces or reserve forces, or any other Act other than the Army Act, 1881, must, in accordance with the Rules of Procedure 11 and 133, follow as nearly as possible the words of the Act ; and where the enactment is in the alternative, each charge must, as in the following forms, state only one of the alternatives.

* See Q.B., 1885, Sect. VI, para. 80.

App. I.

FORMS OF CHARGES.

PART I.

Commencement of Charge-Sheet.

The prisoner [*number, rank, name, regiment*] a soldier
[*officer*] of the regular forces,

or,

The prisoner [*rank, name*] on half-pay [*state office held on
the staff of the army*],

or,

The prisoner [*rank, name*] half-pay [*or pensioner*] em-
ployed on military service under the orders of [*rank, name*],
an officer of the regular forces,

or,

The prisoner, major-general [*or other rank*] [*name*]
commanding [*or otherwise on full pay*],

or,

The prisoner [*number, rank, name*] a militiaman, of the
regiment, called out for training [*or embodied
or otherwise subject to military law*],

or,

The prisoner [*name, description*] being a follower of the
forces, is charged with—

*Where the position of the prisoner, as respects his con-
ditions of service, changed between the time when he com-
mitted the offence and the time when he is charged; as, for
example, if the training period of a militiaman has expired,
or if a soldier has been discharged and therefore ceased to
be subject to military law, the commencement of the charge
will run as follows:—*

The prisoner [*name*] is charged with having, while being
[*number, rank*] of the _____ regiment, a militiaman
called out for training [*or, number, rank*] of the _____
regiment, a soldier of the regular forces] committed the
following offence [*offences*], namely,

.

PART II.

App.

Statement of Offence.

OFFENCES IN RESPECT OF MILITARY SERVICE.

Section 4.

- (1a.) Shamefully { abandoning
delivering up } { a garrison.
a place.
a post.
a guard.
- (1b.) Using } compel { a governor,
means } induce { a com-
to } { manding
officer
[or other
person] } shamefully { abandon { a garrison,
to } deliver { a place,
up } { a post,
a guard, } which it was
his duty to
defend.
- (2.) Shamefully casting away his { arms
ammunition } in the presence of the enemy.
tools
- (3a.) Treacherously { holding correspondence with } the enemy.
giving intelligence to
- (3b.) Treacherously { sending a flag of truce to the enemy.
Through cowardice }
- (4a.) Assisting the enemy with { arms.
ammunition.
supplies.
- (4b.) Knowingly { harbouring } an enemy not being a prisoner.
protecting }
- (5.) When a prisoner of war, voluntarily { serving with } the enemy.
aiding }
- (6.) Knowingly doing, when on active service, an act calculated to imperil the success of { Her Majesty's forces.
part of Her Majesty's forces.
- (7.) Misbehaving
Inducing others to } before the enemy in such manner as to show cowardice.
misbehave }

Section 5.

- (1.) When on active service, without { in order to secure prisoners.
orders from his superior officer, { in order to secure horses.
leaving the ranks { on pretence of taking wounded men to the rear.
- (2.) When on active service { destroying } property without orders from his superior
wilfully { damaging } officer.
- (3a.) When on active service, being taken prisoner { by want of due precaution.
through disobedience of orders.
through wilful neglect of duty.
- (3b.) After being taken prisoner when on active service, failing to rejoin Her Majesty's
service when able to rejoin the same.
- (4.) When on active service, without { holding correspondence with } the enemy.
due authority { giving intelligence to
sending a flag of truce to }
- (5.) When on active service { by word of mouth } spreading reports
in writing { calculated to } alarm.
by signals { create unneces- } despondency.
[otherwise] { sary }
- (6.) When on active service { in action } using words { alarm.
previously to going { calculated to } despondency.
into action { to create }

Section 6.

- (1A.) [When on active service,] leaving his { commanding } to go in search of plunder.
officer }

App. I.

- (1b.) [When on active service,] leaving his $\left\{ \begin{array}{l} \text{guard} \\ \text{picquet} \\ \text{patrol} \\ \text{post} \end{array} \right\}$ without orders from his superior officer.
- (1c.) [When on active service,] forcing a safeguard.
- (1d.) [When on active service] $\left\{ \begin{array}{l} \text{forcing} \\ \text{striking} \end{array} \right\}$ a soldier when acting as sentinel.
- (1e.) [When on active service,] $\left\{ \begin{array}{l} \text{the provost-marshall} \\ \text{an assistant provost-marshall} \\ \text{an officer} \\ \text{a non-commissioned officer} \\ \text{[other person]} \end{array} \right\}$ legally exercising authority } under } { the provost-marshall. }
impeding
- (1eb.) [When on active service, and] when called on, refusing to assist in the execution of his duty $\left\{ \begin{array}{l} \text{the provost-marshall.} \\ \text{an assistant provost-marshall} \\ \text{an officer} \\ \text{a non-commissioned officer} \\ \text{[other person]} \end{array} \right\}$ legally exercising authority } under } { the provost-marshall. }
- (1fa.) [When on active service,] doing $\left\{ \begin{array}{l} \text{provisions} \\ \text{violence to a person bringing supplies} \end{array} \right\}$ to the forces.
- (1fb.) [When on active service,] committing an offence against the $\left\{ \begin{array}{l} \text{property} \\ \text{person} \end{array} \right\}$ of an inhabitant of } the country in which he was serving.
of a resident in }
- (1g.) [When on active service,] breaking into a $\left\{ \begin{array}{l} \text{house} \\ \text{[other place]} \end{array} \right\}$ in search of plunder.
- (1h.) [When on active service,] by $\left\{ \begin{array}{l} \text{discharging firearms} \\ \text{drawing swords} \\ \text{beating drums} \\ \text{making signals} \\ \text{using words} \\ \text{[any means whatever]} \end{array} \right\}$ intentionally } { in action. }
occasioning false } { on the march. }
alarms } { in the field. }
[elsewhere.]
- (1ia.) [When on active service,] $\left\{ \begin{array}{l} \text{parole} \\ \text{treacherously making} \\ \text{known the} \end{array} \right\}$ $\left\{ \begin{array}{l} \text{watchword} \\ \text{countersign} \end{array} \right\}$ to a person not entitled to receive it.
- (1ib.) [When on active service,] $\left\{ \begin{array}{l} \text{parole} \\ \text{treacherously giving a} \\ \text{watchword} \\ \text{countersign} \end{array} \right\}$ different from what he received.
- (1j.) [When on active service,] $\left\{ \begin{array}{l} \text{detaining} \\ \text{appro-} \\ \text{riating to his} \\ \text{irregularly} \\ \text{own} \end{array} \right\}$ $\left\{ \begin{array}{l} \text{corps} \\ \text{battalion} \\ \text{detachment} \end{array} \right\}$ $\left\{ \begin{array}{l} \text{contrary to} \\ \text{orders} \\ \text{issued in} \\ \text{that respect} \end{array} \right\}$ $\left\{ \begin{array}{l} \text{provisions} \\ \text{supplies} \end{array} \right\}$ proceeding to the forces.
- (1k.) When a soldier acting as a sentinel [on active service,] $\left\{ \begin{array}{l} \text{sleeping on his post.} \\ \text{being drunk on his post.} \\ \text{leaving his post before he was regularly relieved.} \end{array} \right\}$
- (2a.) By $\left\{ \begin{array}{l} \text{discharging firearms} \\ \text{drawing swords} \\ \text{beating drums} \\ \text{making signals} \\ \text{using words} \\ \text{[any means whatever]} \end{array} \right\}$ negligently } { in action. }
occasioning } { on the march. }
false } { in the field. }
alarms } { [elsewhere.] }
- (2ba.) Making known the $\left\{ \begin{array}{l} \text{parole} \\ \text{watchword} \\ \text{countersign} \end{array} \right\}$ to a person not entitled to receive it.
- (2bb.) Without good and sufficient cause $\left\{ \begin{array}{l} \text{parole} \\ \text{watchword} \\ \text{countersign} \end{array} \right\}$ different from what he received.
giving a

MUTINY AND INSUBORDINATION.

App. I.

Section 7.

- (1.) { Causing
Conspiring with other
persons to cause } a mutiny } in forces belonging { regular forces.
sedition } to Her Majesty's { reserve forces.
auxiliary forces.
navy.
- (2a.) Endeavouring to seduce a { regular forces
person in Her Majesty's { reserve forces
auxiliary forces } from allegiance to Her Majesty.
navy
- (2b.) Endeavouring to persuade { regular forces
a person in Her Majesty's { reserve forces
auxiliary forces } to join in { a mutiny.
sedition.
navy
- (3a.) Joining in { a mutiny } in forces belonging to Her Majesty's { regular forces.
sedition } { reserve forces.
auxiliary forces.
navy.
- (3b.) Being present at and not using his utmost { a mutiny } in forces belonging to Her { regular forces.
endeavours to sup- { sedition } Majesty's { reserve forces.
press { auxiliary forces.
navy.
- (4.) After coming to the know- { an actual mutiny } in forces { regular forces
ledge of { an intended mutiny } belonging { reserve forces
{ actual sedition } to Her { auxiliary forces
{ intended sedition } Majesty's { navy
{ failing to inform
without delay
his commanding
officer of the
same.

Section 8.

- (1.) { Striking
Using violence to } his superior officer, being in the execution of his office.
Offering violence to
- (2a.) [When on active service,] { striking
using violence to } his superior officer.
offering violence to
- (2b.) [When on active service,] using { threatening
insubordinate } language to his superior officer.

Section 9.

- (1.) Disobeying, in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer in the execution of his office.
- (2.) [When on active service,] disobeying a lawful command given by his superior officer.

Section 10.

- (1.) When concerned in a fray { refusing to obey
striking } an officer who ordered him into
using violence to } arrest
offering violence to
- (2.) { Striking
Using violence to } a person in whose custody he was placed.
Offering violence to
- (3.) Resisting an escort whose duty it was { to apprehend him.
to have him in charge.
- (4.) Breaking out of { barracks.
camp.
quarters

Section 11.

- (1.) Neglecting to obey { general } orders.
{ garrison }
{ other }

App. I. **DESERTION, FRAUDULENT ENLISTMENT, AND ABSENCE WITHOUT LEAVE.**

Section 12.

- (1.) { [When on active service] } deserting Her Majesty's service.
 { [When under orders for active service] } attempting to desert Her Majesty's service.
- (2.) { [When on active service] } persuading } a person subject to mili-
 { [When under orders for active service] } endeavouring to persuade } tary law to desert from
 { } procuring } Her Majesty's service.
 { } attempting to procure }

Section 13.

- (1.) and (2.) Fraudulent enlistment.

Section 14.

- (1.) Assisting a person subject to military law to desert Her Majesty's service.
- (2.) When cog- { the desertion } giving notice to his commanding officer.
 nizant of { the intended } taking some } deserter
 { desertion } steps in his } intending } to be appre-
 { } law not } power to } deserter } hended.
 { } forth- } cause the }

Section 15.

- (1a.) Absenting himself without leave.
- (2a.) Failing to appear at the place of { parade } appointed by his commanding
 { rendezvous } officer.
- (2b.) Without leave, before he was re- { parade } appointed by his commanding
 lieved, going from the place of { rendezvous } officer.
- (2c.) Without urgent necessity, quitting the ranks.
- (3.) { When in camp } being { beyond the limits } general } orders, without a pass
 { When in garrison } found { fixed by } garrison } or written leave
 { When [elsewhere] } found { in a place } [other] } from his command-
 { } bited by } ing officer.
- (4.) Without leave from his commanding officer or due cause absenting himself from school when duly ordered to attend there.

DISGRACEFUL CONDUCT.

Section 16.

Behaving in a scandalous manner, unbecoming the character of an officer and a gentleman.

Section 17.

- (a.) { When charged } the care } of public } money { stealing } the same.
 { When with } the distri- } of regimental } goods { fraudulently }
 { When concerned } bution } { } { misapplying }
 { in } { } { } { embezzling }
- (b.) { When charged } the care } of public } money { being con- } stealing }
 { When with } the distri- } of regi- } goods { cerned in } fraudulent }
 { When concerned } bution } mental } { the } misappli- }
 { in } { } { } { the } cation }
 { } { } { } { } embezzele- }
 { } { } { } { } ment }
- (c.) { When charged with } the care } of public } goods wilfully } damaging
 { When concerned in } the distribution } of regimental } the same.

App. I.

- (3.) When in command of a guard failing { as soon as he was relieved from { guard } his { duty } within twenty-four hours after a prisoner was committed to his charge } to give in writing to the officer to whom he was ordered to report the { prisoner's name. prisoner's offence so far as known to him. name } of the officer { rank } of the [person] { by whom the prisoner was charged. officer } [person] { by whom the prisoner was committed to his custody.

Section 22.

- (1.) When in { arrest confinement prison } { escaping. attempting to escape. } [other lawful custody]

OFFENCES IN RELATION TO PROPERTY.

Section 23.

- (1.) Conniving at the exaction of an exorbitant price for { house } stall } let to a sutler.
- (2.) { Laying a duty upon Taking a fee in respect of Taking an advantage in respect of Being interested in } the sale of provisions } brought into { a garrison a camp a station a barrack a [place] } in { com-mand. he autho-rity. } { the sale of } provisions { for the use of some of Her Majesty's } the purchase of } stores } forces.

Section 24.

- (1.) { Making away with by Being concerned in making away with by } { pawning selling destruction } { his arms. his ammunition. his equipments. his instruments. his clothing. his regimental necessaries. a horse of which he had charge. }
- (2.) Losing by neglect { his arms. his ammunition. his equipments. his instruments. his clothing. his regimental necessaries. a horse of which he had charge. }
- (3.) Making away with by { pawning selling destruction } { a military decoration granted him. } [otherwise]
- (4.) Wilfully injuring { his arms. his ammunition. his equipments. his instruments. his clothing. his regimental necessaries. a horse of which he had charge. }
- (5.) Ill-treating a horse used in the public service. { property belonging to { a comrade. an officer. a regimental mess. a regimental band. a regimental institution. } public property.

Section 25.

- (1.) In a { report
return
muster roll
pay list
certificate
book
route
[other
document] } made by him
signed by him
of the contents of
which it was his
duty to ascertain
the accuracy } knowingly making
being privy to the
making of } { a false statement.
a fraudulent state-
ment.
an omission with in-
tent to defraud.
- (2.) { Knowingly, and } defraud { suppressing } a document { preserve.
with intent to } injure some } making away with } which it } produce.
person } defacing } was his }
altering } duty to
- (3.) Where it was his official duty to make a declaration respecting any matter knowingly making a false declaration.

Section 26.

- (1.) When signing a document relating to { pay
arms
ammunition
equipments
clothing
regimental
necessaries
provisions
furniture
bedding
blankets
sheets
utensils
forage
stores } leaving in blank a material part for
which his signature was a voucher.
- (2.) { Refusing to } { make } { a report } { which it was his duty to } { make.
By culpable neglect } send } { a return } { send.
omitting to }

Section 27.

- (1.) Making a false accusation against { an officer } knowing such accusation to be
{ a soldier } false.
- (2.) In making a complaint { knowingly making a false statement { an officer.
where he thought } affecting the character of { a soldier.
himself wronged } knowingly and wilfully suppressing { material facts.
a material fact.
- (3.) Falsely stating to his { been guilty of { desertion.
commanding officer } fraudulent enlistment.
that he had } desertion from the navy.
served in and { a portion of the regular forces.
been dis- { a portion of the reserve forces.
charged from { a portion of the auxiliary forces.
the navy.
- (4.) Making a wilfully false { military officer } in respect of the prolongation of furlough.
statement to a { justice }

OFFENCES IN RELATION TO COURTS-MARTIAL.

Section 28.

- (1.) When duly { summoned } as a witness before a court-martial, making default
{ ordered to attend } in attending.
- (2.) Refusing to { take an oath legally required by a court-martial to be taken.
make a solemn declaration legally required by a court-martial to be
made.
- (3.) Refusing to produce a { power } legally required by a court-martial to be produced
document in his { control } by him.
- (4.) Refusing, when a witness, to answer a question to which a court-martial might legally require an answer.

(5.) Being guilty of contempt of a court-martial by using { insulting threatening } language.
causing { an interruption a disturbance } in the proceedings of such court.

(1.) Wilfully giving } oath }
false evidence } solemn de- } before } a court-martial.
when exam- } clarations } a court } authorised by the Army Act, 1881,
ined on } } an officer } to administer an oath.

Section 30.

- (1.) Being guilty of ill-treatment by { violence } extortion making disturbances in billets { of the occupier of a house in which a person } horse } was billeted.
- (2.) { Refusing Neglecting } { on complaint and proof of the ill-treatment by } { violence by extortion by making disturbances in billets by } { an officer a soldier } { under his command, of the occupier of a house in which a person } horse } was billeted to cause compensation to be made for the same.
- (3.) Failing to comply with the provisions of the Army Act, 1881, with respect to the { payment of the just demands of a person on whom he } making up and transmitting of an account of the money due to a person on whom { an officer } { a soldier } { under his command } had been billeted.
- (4.) Wilfully demanding billets which were not actually required { person } entitled to be for some { horse } billeted.
- (5.) { Taking } from a { money } { excusing } a person { knowingly suffering to be taken } person { a reward } for { relieving } officers.
- { his liability } in respect { billeting } of { soldiers. }
from { a part of his liability } of the { quartering } horses.
- (6a.) { Using menace to } a constable { to make him give billets contrary to } the Army Act, 1881.
{ Offering compulsion on } a civil officer
- (6b.) { Using menace to } a constable { tending to deter him from his duty under } the provisions
{ Offering compulsion on } a civil officer { to discourage performing part of } of the Army
tending to induce him to do something contrary to Act, 1881, re- relating to bil-
(to receive, without his) lleting.
- (7.) { Using menace to } a person tending to oblige him { consent, a } person } horse } the provisions of
{ Offering compulsion on } him { not duly billeted upon him in pursuance of } the Army Act,
to furnish some accommodation which he is not required to furnish by 1881, relating to billeting.

Section 31.

- (1.) Wilfully demanding { carriages
animals } which were not actually required for purposes
vessels } authorised by the Army Act, 1881.

App. I.

- (2.) Wilfully contravening $\left\{ \begin{array}{l} \text{the enactments of the} \\ \text{Army Act, 1881} \\ \text{[other enactments]} \\ \text{the regulations of the} \\ \text{service} \end{array} \right\}$ in a matter relating to the enlistment or attestation of soldiers of the regular forces.

MISCELLANEOUS MILITARY OFFENCES.

Section 35.

- (1.) Using $\left\{ \begin{array}{l} \text{traitorous} \\ \text{disloyal} \end{array} \right\}$ words regarding the Sovereign.

Section 36.

- (1.) Without $\left\{ \begin{array}{l} \text{verbally} \\ \text{due in writing} \\ \text{autho- by signal} \\ \text{rity [otherwise]} \end{array} \right\}$ disclosing $\left\{ \begin{array}{l} \text{the numbers of} \\ \text{the position of} \\ \text{some forces} \\ \text{some magazines} \\ \text{of the forces} \\ \text{some stores of} \\ \text{the forces} \end{array} \right\}$ at such time and in such manner as to have produced effects injurious to Her Majesty's service.
- $\left\{ \begin{array}{l} \text{some forces} \\ \text{some magazines} \\ \text{of the forces} \\ \text{some stores of} \\ \text{the forces} \end{array} \right\}$ of some forces
- $\left\{ \begin{array}{l} \text{some prepa-} \\ \text{rations for} \\ \text{some orders} \\ \text{relating to} \end{array} \right\}$ operations of some forces
- $\left\{ \begin{array}{l} \text{operations} \\ \text{move-} \\ \text{ments} \end{array} \right\}$

Section 37.

- (1.) $\left\{ \begin{array}{l} \text{Striking} \\ \text{Ill-treating} \end{array} \right\}$ a soldier.
- (2.) After receiving the pay of $\left\{ \begin{array}{l} \text{an officer} \\ \text{a soldier} \end{array} \right\}$ unlawfully detaining or unlawfully refusing to pay the same when due.

Section 38.

- (1.) $\left\{ \begin{array}{l} \text{Fighting} \\ \text{Promoting} \\ \text{Being concerned in} \\ \text{Conniving at fighting} \end{array} \right\}$ a duel.
- (2.) Attempting to commit suicide.

Section 39.

- (1.) On application being made to him $\left\{ \begin{array}{l} \text{neglecting} \\ \text{refusing} \end{array} \right\}$ $\left\{ \begin{array}{l} \text{to deliver over to the civil} \\ \text{magistrate} \\ \text{to assist in the lawful ap-} \\ \text{prehension of} \end{array} \right\}$ an officer or a soldier $\left\{ \begin{array}{l} \text{accused of an} \\ \text{offence pun-} \\ \text{ishable by a} \\ \text{civil court.} \end{array} \right\}$

Section 40.

- (1.) $\left\{ \begin{array}{l} \text{An act} \\ \text{Conduct} \\ \text{Disorder} \\ \text{Neglect} \end{array} \right\}$ to the prejudice of good order and military discipline.

Section 41.

- (1-4.) $\left\{ \begin{array}{l} \text{When on active service} \\ \text{In Gibraltar} \\ \text{In some place not in the United Kingdom or} \\ \text{Gibraltar and more than one hundred} \\ \text{miles as measured in a straight line from} \\ \text{any city or town in which he can be tried} \\ \text{by a competent civil court for the offence} \end{array} \right\}$ committing the offence of $\left\{ \begin{array}{l} \text{treason.} \\ \text{murder.} \\ \text{manslaughter.} \\ \text{treason-felony.} \\ \text{rape.} \end{array} \right\}$
- (5.) Committing a civil offence, that is to say *[state the offence according to English law, either using legal terms, e.g., arson, larceny, larceny from the person, assault, robbery, with violence, &c., or, in ordinary language, e.g., stealing, injuring property, setting fire to a house, &c.]*

Section 155.

(1-3).	{ Negotiating Acting as agent for Aiding Conniving at	{	the { sale } of a commission in Her Majesty's regular	{	{ promotion in } retirement from employment in	{ Her Majes- ty's regular forces.
			the { giving } of any valuable			
			{ receiving } consideration in respect of any			
		{	any exchange made in manner not autho- rised by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which a	{	sum of money } [consideration]	has been { given. received.

ILLUSTRATION OF CHARGE.

Note.—The following is an illustration of a complete charge-sheet, with statement of offences and particulars.

CHARGE-SHEET.

The prisoner, No. 153, Private John Smith, 69th Regiment, a soldier of the Regular Forces, is charged with—

First : *Using threatening language to his superior officer—*
in that

at Topsham Barracks, Exeter, on the 20th of June, 1880, he said to Serjeant William Robinson, his superior officer, "I will punch your head," or words to that effect.

Secondly : *Resisting an escort whose duty it was to have him in*
charge—
in that

at the place and on the day mentioned in the first charge he kicked Drummer James Burn, of the 69th Regiment, who was taking him into confinement, and thereby damaged a watch and chain of the said James Burn to the amount of five shillings.

The following further Illustrations of Charges will be found useful. They are not part of the Appendix to the Rules of Procedure.

FURTHER ILLUSTRATIONS OF CHARGES.

Note.—The words in brackets in the following illustrations of charges do not necessarily form part of the charge, but are sometimes alternatives, and sometimes are inserted as aggravating or explaining the offence, or for the purpose of the award by the court of stoppages from pay.

Where the words in brackets are “when on active service” they alter the gravity of the charge, and are very material, but are inserted in brackets because the charge will be a good charge without them, although if they are omitted the charge will be for a minor offence.

The words “soldier of the regular forces” in the description of the prisoner are not essential where he is described as belonging to a battalion in the regular forces, but, as mentioned in the note to Rule 10, it is, as a rule, desirable to add them.

Where the circumstances admit of it, two or more charges in the forms following may be inserted in the same charge-sheet, e.g., No. 4 might be inserted in the same charge-sheet as No. 6 if the offences were committed at the same time. Or again, if the offence in No. 19 and No. 20 had both been committed against the same officer at the same time they might be included in the same charge-sheet.

A second charge may be added to the charge-sheet as an alternative to the first charge in those cases (some of which are mentioned in the notes) where it is doubtful whether the offence committed by the person amounted to one charge or to the other.

In certain cases, such as theft, embezzlement, fraudulent enlistment, separate charges for separate instances of the same offence may be inserted in the same charge-sheet. See note to Rule 61.

The old practice of inserting one charge with several instances should be abandoned. Each separate act of the prisoner which is an offence should, as a rule, form a separate charge, and not be stated as an instance. In case of doubt the best test is whether the prisoner can plead guilty or not guilty to the charge without stating any exceptions. If, for instance, a prisoner is charged under s. 16, and the particulars allege the uttering of cheques which he had no funds to meet, each cheque should form the subject of a separate charge. If, however, the particulars allege a course of conduct, and no single act is considered to amount to an offence under s. 16, the whole course of conduct should be embraced in one charge. Again, if the charge is for embezzling sums from time to time, each sum should be in a separate charge, and if embezzlement of different funds under a different course of management is alleged, the embezzlement of each fund should form the subject of a separate charge-sheet.

No. 1.

CHARGE-SHEET.

Sec. 4 (2).

The prisoner, No. Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—

Shamefully casting away his arms in the presence of the enemy—

in that he, at _____, on _____, when on outlying piquet, and attacked by the enemy, shamefully cast away his rifle, left his piquet, and ran away.

No. 2.

CHARGE-SHEET.

The prisoner, No. _____, Private _____, Battalion _____, Regiment, a soldier of the Regular Forces, is charged with— Sec. 4 (7).

Misbehaving before the enemy in such manner as to show cowardice—

in that he, at _____, on _____, during an attack on _____, and when under the enemy's fire, fell out of the ranks, under pretence of being unable to march further.

No. 3.

CHARGE-SHEET.

The prisoner, No. _____, Private _____, Battalion _____, Regiment, a soldier of the Regular Forces, is charged with— Sec. 5 (1).

When on active service, without orders from his superior officer, leaving the ranks on pretence of taking wounded men to the rear—

in that he, at _____, on _____, when in the ranks, and during an attack upon _____, without orders from his superior officer, on pretence of taking to the rear Lieutenant _____, who was wounded, left the ranks.

No. 4.

CHARGE-SHEET.

The prisoner, No. _____, Private _____, Battalion _____, Regiment, a soldier of the Regular Forces, is charged with— Sec. 5 (2).

When on active service, without orders from his superior officer, wilfully destroying property—

in that he, on _____, in _____, and encamped near the village of _____, without orders from his superior officer, wilfully set fire to a dwelling-house, situate in the said village.

No. 5.

CHARGE-SHEET.

The prisoner, No. _____, Private _____, Battalion _____, Regiment, a soldier of the Regular Forces, is charged with— Sec. 6 (1).

When on active service, leaving his commanding officer to go in search of plunder—

in that he, on _____, when belonging to a force in military occupation of _____, and when marching with his battalion under Lieutenant-Colonel _____, through the town of _____, left his commanding officer, and went in search of plunder.

No. 6.

CHARGE-SHEET.

The prisoner, No. _____, Private _____, Battalion _____, Regiment, a soldier of the Regular Forces, is charged with— Sec. 6 (1c).

[When on active service] forcing a safeguard—

in that he, at _____, on _____, in _____ wilfully, and after being duly warned, entered a dwelling-house in _____ street, at

, in which, by orders of the General commanding, Serjeant had been placed as a safeguard, for the protection of the occupants and the property therein, and took therefrom five bottles of wine, value , or thereabout.

No. 7.

CHARGE-SHEET.

Sec. 6 (1d). The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] forcing a soldier when acting as sentinel—
in that he, at , on , after being warned by the sentry on No. Post, Guard, not to pass, passed the said sentry.

No. 8.

CHARGE-SHEET.

Sec. 6 (1f). The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] doing violence to a person bringing provisions to the forces—
in that he, at , on , assaulted one , a sutler, who was bringing into camp bread and vegetables for the use of the troops [and forcibly took from him a portion of the same, value].

No. 9.

CHARGE-SHEET.

Sec. 6 (1f). The prisoner, A. B., sutler, being subject to military law by reason of accompanying Her Majesty's troops on active service in Egypt, is charged with—
[When on active service, committing an offence against the person of a resident in the country in which he was serving, in that he, at , on , committed a rape on , of .

No. 10.

CHARGE-SHEET.

Sec. 6 (1f). The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
[When on active service committing an offence against the person of an inhabitant of the country in which he was serving, in that he, at , on , in Egypt, assaulted , of .

No. 11.

CHARGE-SHEET.

Sec. 6 (1g). The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] breaking into a house in search of plunder,
in that he, at , in [Egypt] , on , broke open the front door of a dwelling-house No. , in street, and entered it in search of plunder.

No. 12.

CHARGE-SHEET.

Sec. 6 (1h). The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

[When on active service] by discharging fire arms, intentionally occasioning false alarms, in that he, on , when on the march with his Battalion between and , by intentionally discharging his rifle, occasioned a false alarm.

Note.—If there is a doubt as to whether the discharge of the rifle was intentional, a charge similar to No. 14 can be added as an alternative in the same charge sheet.

No. 13.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 6 (1k).
Regiment, a soldier of the Regular Forces, is charged with—

When a soldier acting as sentinel [on active service] sleeping on his post,
in that he, at , on , between 1 and 2 a.m. when sentry on No. Post Guard was asleep.

No. 14.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 6 (2a).
Regiment, a soldier of the Regular Forces, is charged with—

By discharging fire arms, negligently occasioning false alarms in camp,
in that he, when encamped with , at , on , by negligently discharging his rifle at about midnight, occasioned a false alarm in the said camp.

No. 15.

CHARGE-SHEET.

The prisoner, No. , Serjeant , Battalion, Sec. 7 (1).
Regiment, a soldier of the Regular Forces, is charged with—

First: Causing a mutiny in forces belonging to Her Majesty's Regular Forces,
in that he, at , on , when on detachment under Major Regiment, in his Barrack Room addressed Serjeant , Private , and other soldiers, Battalion Regiment, there assembled, in mutinous language, to the effect that the said Major was parading them from morning till night, and that he granted them no indulgences, and that he (the prisoner) further advised them not to turn out at Commanding Officer's parade, which was to take place at 10 a.m. next day, in consequence of which language they, the said Serjeant , Private , and other soldiers Battalion Regiment combined together, and did not turn out for the said parade.

Secondly: Endeavouring to persuade persons in Her Majesty's Second Regular Forces to join in a mutiny, Charge
in that he, at the place and about the date stated in the first Sec. 7 (2b).
charge, endeavoured to persuade Lance-Corporal Battalion, Regiment, to join in a mutiny then existing at , and not to mount guard, for which duty he, the said Lance-Corporal, had been duly warned.

No. 16.

(Joint Trial.)

CHARGE-SHEET.

The prisoners, No. , Private , Battalion, Sec. 7 (3a).

Regiment, and No. , Private , Battalion,
 Regiment, soldiers of the Regular Forces, are charged with—
*Joining in a mutiny in forces belonging to Her Majesty's
 Forces,*
 in that they, at , on [or about] joined in a mutiny
 by combining amongst themselves [and with other soldiers of the
] to resist and offer violence to the Military Police in the
 execution of their duty.

Note.—This charge is equally applicable to the case of a single prisoner.

No. 17.

CHARGE-SHEET.

Sec. 7 (4). The prisoner, Bombardier , Brigade,
 Division, Royal Artillery, a soldier of the Regular Forces, is
 charged with—

*After coming to the knowledge of an intended mutiny in forces
 belonging to Her Majesty's Forces, failing to inform without delay
 his commanding officer of the same,*
 in that he, at , on , was present in the public-house
 known as the Red Lion, where Bombardier , Gunner
 , and other soldiers of Battery, Brigade,
 Division Royal Artillery were assembled, and, in his
 hearing agreed to cut up and destroy the harness belonging to the
 said Battery, and failed to inform his commanding officer thereof.

No. 18.

CHARGE-SHEET.

Sec. 8 (1). The prisoner, No. , Private , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
Striking his superior officer, being in the execution of his office
 in that he, at , on , struck with his fist in the face
 Corporal , Battalion, Regiment, who was
 at the time in command of an escort taking prisoners to the
 guard-room.

No. 19.

CHARGE-SHEET.

Sec. 8 (2a). The prisoner, No. , Private , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] offering violence to his superior officer,
 in that he, at , on , when checked by Corporal
 , Battalion, Regiment, for swearing in his barrack-
 room, attempted to strike the said corporal.

No. 20.

CHARGE-SHEET.

Sec. 8 (2b). The prisoner, No. , Private , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
*When on active service] using threatening language to his
 superior officer,*
 in that he, at , on , after having been awarded a
 punishment by his commanding officer, said to Serjeant ,
 Battalion, Regiment, "I'll be revenged on you for
 this, yet."

No. 21.

CHARGE-SHEET.

Sec. 9 (1). The prisoner, No. , Private , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—

Disobeying in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer, in the execution of his office,
 in that he, at , on , when personally ordered by Captain , Battalion, Regiment, upon commanding officer's parade, to take up his rifle and fall in, did not do so, divesting himself at the same time of his waist belt, and said, "I'll soldier no more, you may do what you please."

No. 22.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 9 (2).
[When on active service] disobeying a lawful command given by his superior officer,
 in that he, at , on , did not leave the canteen when ordered to do so by Corporal , Battalion, Regiment.

No. 23.

CHARGE-SHEET.

The prisoner, Captain , Battalion, Regiment, an officer of the Regular Forces, is charged with— Sec. 10 (1).
When concerned in a quarrel, refusing to obey an officer who ordered him into arrest,
 in that he, on , in the ante-room of the officers' mess at , after having quarrelled with and struck Lieutenant , Battalion, Regiment, on being ordered into arrest by Lieutenant , Battalion, Regiment, refused to obey the order.

No. 24.

CHARGE-SHEET.

The prisoner, No. , Corporal , Dragoons, a soldier of the Regular Forces, is charged with— Sec. 10 (2).
Striking a person in whose custody he was placed,
 in that he, at , on , when placed in the custody of Police Constable , struck with his waist-belt, on the head, the said Police Constable.

No. 25.

CHARGE-SHEET.

The prisoner, No. , Drummer , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 10 (4).
Breaking out of barracks,
 in that he, at , on , broke out of barracks, when confined thereto by order of his commanding officer.

No. 26.

CHARGE-SHEET.

The prisoner, No. , Serjeant , Hussars, a soldier of the Regular Forces, is charged with— Sec. 11.
Neglecting to obey camp orders,
 in that he, at , on , bathed in the river above camp, contrary to a camp order directing all persons to abstain from bathing in that part of the river.

No. 32.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 13 (1).
 Regiment, a soldier of the Regular Forces, is charged with—
Fraudulent enlistment,
 in that he, at , on , when belonging to the
 Battalion, Regiment, without having fulfilled the
 conditions enabling him to enlist, enlisted into Her Majesty's
 Regular Forces for general service [or for service in the
 regiment], thereby obtaining a free kit, value

No. 33.

CHARGE-SHEET.

The prisoner, No. , Private Dragoons, Sec. 14 (1).
 a soldier of the Regular Forces, is charged with—
Assisting a person subject to Military Law to desert Her Majesty's
Service,
 in that he, at , on [or about] , well know-
 ing that Private , Battalion, Regiment,
 was about to desert, provided him with a suit of plain clothes.

No. 34.

CHARGE-SHEET.

The prisoner, No. , Private Lancers, Sec. 15 (1).
 a soldier of the Regular Forces, is charged with—
Absenting himself without leave,
 in that he, at , absented himself from tattoo roll call
 on till 7.30 a.m. on

No. 35.

CHARGE-SHEET.

The prisoner, No. , Gunner , Brigade, Sec. 15 (2).
 Division, Royal Artillery, a soldier of the Regular Forces, is
 charged with—
Failing to appear at the place of rendezvous appointed by his
commanding officer,
 in that he, at , on , when in billet in the
 town of , failed to appear at the market square in that
 town, the place of rendezvous duly appointed by , his
 commanding officer.

No. 36.

CHARGE-SHEET.

The prisoner, No. , Bugler , Battalion, Sec. 15 (3).
 Regiment, a soldier of the Regular Forces, is charged with—
When in camp being found beyond the limits fixed by Regimental
Orders without a pass from his commanding officer,
 in that he, when encamped near Exeter, was found on
 in Topsham, without a pass from his commanding officer.

No. 37.

CHARGE-SHEET.

The prisoner, Lieutenant , Regiment, an officer Sec. 16.
 of the Regular Forces, is charged with—
Behaving in a scandalous manner unbecoming the character of
an officer and a gentleman,

in that he, at _____, on _____, in payment of his mess account, gave Mr. _____, the mess man, a cheque for 31l. on Messrs. Cox & Co., Army Agents, well knowing that he had not sufficient funds in the hands of the said Agents to meet the said cheque, and having no reasonable grounds for supposing that the aforesaid cheque would be honoured when presented.

No. 38.

CHARGE-SHEET.

- Sec. 16. The prisoner, Captain _____, Regiment, an officer of the Regular Forces, is charged with—
Behaving in a scandalous manner unbecoming the character of an officer and a gentleman,
 in that he, at _____, on _____, [or between _____ and _____], wrote and sent to his commanding officer, Lieut.-Colonel _____, Regiment, an anonymous letter, in which he made use of the following words:—
 “By stopping leave and overworking your officers and men, you make the Regiment a hell upon earth. Your tyrannical conduct is a matter of general remark, and you may rely on it, unless you change, complaints will be made against you at the next General’s Inspection.”

No. 39.

CHARGE-SHEET.

- Sec. 17 (a). The prisoner, Captain _____, Army Pay Department, an officer of the Regular Forces, is charged with—
When charged with the care of public money, embezzling the same,
 in that he, at _____, on _____, [or between _____ and _____], when entrusted with the care of money for paying the troops, charged twenty-five pounds six shillings public money, in his General Account Book at page 21, as a debit against the War Office; whereas in fact no such sum was so chargeable; and did so with intent to apply that sum to his own use.

No. 40.

CHARGE-SHEET.

- Sec. 17 (a). The prisoner, Quartermaster _____, Army Hospital Corps, an officer of the Regular Forces, is charged with—
When charged with the care of public goods, fraudulently mis-applying the same,
 in that he, at _____, on [or about] _____, when charged with the care of ten rugs for hospital use, value _____ or thereabout, used the said rugs for the purpose of carpeting his quarters, and the passage adjacent thereto.

No. 41.

CHARGE-SHEET.

- Sec. 17 (a). The prisoner, No. _____, Corporal _____, Ordnance Store Department, a soldier of the Regular Forces, is charged with—
When concerned in the care of public goods, stealing the same,
 in that he, at _____, on [or about] _____, when employed in the care of Ordnance Stores, under Captain _____, Ordnance Store Department, stole therefrom three revolver pistols, value twenty-eight shillings each.

No. 42.

CHARGE-SHEET.

The prisoner, No. , Quartermaster Serjeant , Sec. 17 (a).
Battalion, Regiment, a soldier of the Regular Forces
is charged with—

When concerned in the distribution of public goods fraudulently misapplying the same,

in that he, at , on , when concerned in
the distribution of coals to Battalion, Regiment, with
intent to defraud, issued four sacks thereof weighing two cwt.
each or thereabout, of a total value of , or thereabout, to
a person not entitled to receive them.

No. 43.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 18 (1a).
Regiment, a soldier of the Regular Forces, is charged with—
Malingering,

in that he, at , on , [between
and], with the intention of evading his duties as a
soldier, counterfeited dumbness.

No. 44.

CHARGE-SHEET.

The prisoner, No. , Private , Hussars, a Sec. 18 (1b).
soldier of the Regular Forces, is charged with—

Feigning disease,

in that he, at , on , pretended to Surgeon
, that he was suffering violent pains in the head
and down his back, whereas he was not so suffering.

No. 45.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 18 (2a).
Regiment, a soldier of the Regular Forces, is charged with—

Wilfully maiming himself with intent thereby to render himself unfit for service,

in that he, at , on , when sentry on No.
Post Guard, by discharging his rifle wilfully blew off the
fore and middle finger of his right hand.

No. 46.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 18 (3).
Regiment, a soldier of the Regular Forces, is charged with—

Being wilfully guilty of misconduct by means of which misconduct he delayed the cure of disease,

in that he, at , on , [between
and], when under medical treatment for syphilitic
sores, tampered with the said sores by the secret application of
bluestone.

No. 47.

CHARGE-SHEET.

The prisoner, No. , Private (Lance-Corporal) , Sec. 18 (4a).
Hussars, a soldier of the Regular Forces, is charged with—

Embezzling public money,

in that he, at _____, on _____, when entrusted by Staff-Serjeant Major _____ with the sum of five shillings, public money, for the purpose of paying for the transmission of five official telegrams, applied the same for his own use.

No. 48.

CHARGE-SHEET.

- Sec. 18 (4). The prisoner, No. _____, Private _____, Battalion, _____ Regiment, a soldier of the Regular Forces, is charged with—
 First, *Stealing goods, the property of a comrade*, in that he, in the Cambridge Barracks at Portsmouth, on the 10th July, 1883, stole a watch, the property of Charles Williams, a private in the same regiment:
 Secondly, *Receiving, knowing them to have been stolen, goods the property of a comrade*, in that he, at Portsmouth, at the place and on the day aforesaid, was in possession of a watch stolen from the said Charles Williams, which he knew to have been stolen.

No. 49.

CHARGE-SHEET.

- Sec. 18 (5a). The prisoner, No. _____, Private _____, Battalion, _____ Regiment, a soldier of the Regular Forces, is charged with—
Such an offence of a fraudulent nature as is mentioned in sub-section 5 of Section 18 of the Army Act, 1881, in that he, at _____, on [or about] _____, when employed as an assistant in the regimental canteen, with intent to defraud, added water to a cask of ale belonging to the stores of the said canteen.

No. 50.

CHARGE-SHEET.

- Sec. 19. The prisoner, No. _____, Private _____, Battalion, _____ Regiment, a soldier of the Regular Forces, is charged with—
 [When on active service] *drunkenness on duty*, in that he, at _____, on _____, when on duty, namely, parade, was drunk.

Note.—A soldier drunk when on the line of march may be tried for being drunk on duty. See chapter III, para. 27.

In order to enable a court-martial to award summary punishment, it is essential to allege "when on active service."

No. 51.

CHARGE-SHEET.

- The prisoner, No. _____, Drummer _____, Battalion, _____ Regiment, a soldier of the Regular Forces, is charged with—
 [When on active service] *drunkenness* in that he, at _____, on _____, was drunk in barracks, [having been previously warned for night piquet] or [when required for duty in aid of the civil power].
- Sec. 19 (b).

Note.—When the offence is committed not on duty, but under such circumstances as to constitute an aggravated offence of drunkenness, it is essential, if the prisoner is to be charged with an aggravated offence of drunkenness, to allege that he had been warned for duty, or by reason of drunkenness was found unfit for duty.

- Sec. 20 (1). In order to enable a court-martial to award summary punishment, it is essential to allege the facts showing the offence to be an aggravated offence of drunkenness, and also to allege "when on active service."

No. 52.

CHARGE-SHEET.

The prisoner, No. , Serjeant , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
*When in command of a piquet wilfully releasing without proper
 authority, a prisoner committed to his charge,*
 in that he, at , on , when in command of
 a piquet patrolling the town, released Private
 Battalion, Regiment, a prisoner who had been committed to
 his charge by provost-serjeant .

No. 53.

CHARGE-SHEET.

The prisoner, No. , Serjeant , Battalion, Sec. 20 (1).
 Regiment, a soldier of the Regular Forces, is charged with—
*When in command of a guard, without proper authority releas-
 ing a prisoner committed to his charge,*
 in that he, at , on , when in command of
 the rear guard, on the line of march, without authority released
 Corporal , Battalion, Regiment, a prisoner
 committed to his charge by [and allowed the said
 Corporal to join his company].

No. 54.

CHARGE-SHEET.

The prisoner, No. , Corporal , Battalion, Sec. 20 (2).
 Regiment, a soldier of the Regular Forces, is charged with—
Wilfully allowing to escape a prisoner committed to his charge,
 in that he, at Liverpool, on , when in command of
 an escort conducting to Dublin, Private
 Battalion, Regiment, a prisoner committed to his charge,
 without valid cause abandoned the prisoner and escort, and went
 to a different part of the town and thereby the said prisoner
 escaped.

Note.—Upon this charge a court-martial is competent to find the prisoner
 guilty of, "without reasonable excuse, allowing the prisoner to escape."
 Sec. 56 (5) Army Act, 1881.

No. 55.

CHARGE-SHEET.

The prisoner, No. , Corporal , Battalion, Sec. 20 (2).
 Regiment, a soldier in the Regular Forces, is charged with—
*Without reasonable excuse allowing to escape a prisoner com-
 mitted to his charge,*
 in that he, at , on , when conducting to
 his Battalion, Private Battalion,
 Regiment, a prisoner committed to his charge, permitted a crowd
 to assemble round the prisoner when near the railway station
 without taking reasonable means to prevent the same, and thereby
 the said prisoner escaped.

No. 56.

CHARGE-SHEET.

The prisoner, No. , Private , Dragoon Sec. 22.
 Guards, a soldier of the Regular Forces, is charged with—
When a prisoner under escort escaping,

in that he, at _____, on _____, when a prisoner proceeding to _____ escaped.

No. 57.

CHARGE-SHEET.

- Sec. 22. The prisoner, No. _____, Private _____, Battalion, _____ Regiment, a soldier of the Regular Forces, is charged with—
When a prisoner under escort attempting to escape,
 in that he, at _____, on _____, when a prisoner under escort proceeding to _____, broke away from his escort and attempted to escape.

No. 58.

CHARGE-SHEET.

- Sec. 24 (1). The prisoner, No. _____, Private _____, Battalion, _____ Regiment, a soldier of the Regular Forces, is charged with—
First, Making away with by pawning his clothing and regimental necessities,
 in that he, at _____, on [or about] _____, pawned to _____, for the sum of five shillings, one pair of ankle boots and two brushes, value _____, and one flannel shirt:
Secondly, Losing by neglect his clothing and regimental necessities,
 in that he, at the place and on [or about] the day aforesaid, was deficient of the articles of his clothing and regimental necessities specified in the first charge.
Note.—If the prisoner sold his clothing, &c., this same charge can be used with the substitution of "selling" for "pawning."
 The second charge should only be added where there is any doubt about the proof of the pawning or selling being sufficient.

No. 59.

CHARGE-SHEET.

- Sec. 24 (2). The prisoner, No. _____, Private _____, Battalion, _____ Regiment, a soldier of the Regular Forces, is charged with—
Losing by neglect his equipments, clothing, and regimental necessities,
 in that he, at _____, on [or about] _____, was deficient of one waist-belt, value _____, one grey serge frock value _____, and two pairs of socks.

No. 60.

CHARGE-SHEET.

- Sec. 25 (1). The prisoner No. _____, Colour-Serjeant _____, Battalion, _____ Regiment, a soldier of the Regular Forces, is charged with—
In a document signed by him knowingly making a fraudulent statement,
 in that he, at _____, on [or about] _____, [between _____ and _____], in his capacity as pay-serjeant of _____ company _____ Battalion, _____ Regiment, fraudulently entered in his cash account for the month of _____, 18 _____, the following item—Washing bills, three pounds four shillings and two pence, whereas the actual amount paid by him in respect of such bills was two pounds fifteen shillings and four pence.

No. 61.

CHARGE-SHEET.

- Sec. 25 (2). The prisoner, No. _____, Colour-Serjeant _____,

Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Knowingly and with intent to defraud some person, altering a document which it was his duty to preserve,
 in that he, at , on [or about] [between
 and] in the Military Savings Bank Form No. 2, statement of
 deposits and withdrawals for the month of , 18 , altered,
 with intent to defraud Private Battalion,
 Regiment, the figure £2 sterling, representing a withdrawal made
 by the said Private, and changed it into £3 sterling.

No. 62.

CHARGE-SHEET.

The prisoner, No. , Orderly-Room Serjeant , Sec. 25 (2).
 Battalion, Regiment, a soldier of the Regular
 Forces, is charged with—

Knowingly and with intent to defraud making away with a document which it was his duty to preserve,
 in that he, at , on [or about] , with intent
 to defraud, burned his Regimental Defaulters' Sheet.

No. 63.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 27 (1).
 Regiment, a soldier of the Regular Forces, is charged with—

Making a false accusation against a soldier knowing it to be false,
 in that he, at , on , when appearing before
 Captain , Battalion, Regiment, to answer
 for a minor offence, used language to the effect following, that is
 to say: "The colour-serjeant is not fair in taking men for duty,
 and no one in the company can get on if he does not give him a
 bribe," meaning thereby the colour-serjeant of his company,
 Battalion, Regiment, and knowing the said statement
 to be false.

No. 64.

CHARGE-SHEET.

The prisoner, No. , Private , Dragoons, Sec. 27 (2).
 a soldier of the Regular Forces, is charged with—

Falsely stating to his commanding officer that he had been guilty of desertion,
 in that he, at , on , stated to
 , his commanding officer, that he was a deserter from
 , well knowing such statement to be false.

No. 65.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 29.
 Regiment, a soldier of the Regular Forces, is charged with—

Wilfully giving false evidence before a court-martial,
 in that he, at , on , when examined as a
 witness before a court-martial, stated on oath, that Private
 , Battalion, Regiment, the prisoner before the
 said court, was in his, the witness's, company in his barrack room.
 at , between 4 and 5 p.m. on , well
 knowing such statement to be false.

(A.M.L.)

No. 66.

CHARGE-SHEET.

- Sec. 30 (3). The prisoner, No. , Troop Serjeant-Major
Regiment, a soldier of the Regular Forces, is charged
with—
*Failing to comply with the provisions of the Army Act, 1881,
with respect to the payment of the just demands of a person on
whom soldiers and horses under his command had been billeted,*
in that he, at , on , having himself with
his horse, and three troopers Regiment, with their horses,
been billeted on Mr. , a keeper of a victualling house,
failed to pay the said Mr. , the sum of ,
due to him for the said billets.

No. 67.

CHARGE-SHEET.

- Sec. 32. The prisoner, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
*After having been discharged with disgrace from a part [parts]
of Her Majesty's Forces, enlisting in the Regular Forces without
declaring the circumstances of his discharge [discharges].*
in that he, at , on , after having been dis-
charged with ignominy from , [as incorrigible and
worthless from , and on conviction of felony from
], enlisted in Her Majesty's Regular Forces for general
service [or, for service in the Regiment], without declaring
the circumstances of his discharge [discharges].

No. 68.

CHARGE-SHEET.

- Sec. 33. The prisoner, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
*Making a wilfully false answer to a question set forth in the
attestation paper which was put to him by or by direction of the
justice before whom he appeared for the purpose of being attested,*
in that he, at , on , when he appeared
before A.B., a Justice of the Peace, for the purpose of being
attested—to the question put to him, Have you ever served in the
Army? answered, "No;" whereas, he had served, as he well
knew, in the Regiment.

No. 69.

CHARGE-SHEET.

- Sec. 38 (2). The prisoner, No. , Gunner , Brigade,
Division, Royal Artillery, a soldier of the Regular Forces,
is charged with—
Attempting to commit suicide,
in that he, at , on , with intent to commit
suicide, cut his throat with a razor.

No. 70.

CHARGE-SHEET.

- Sec. 40. The prisoner, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
An act to the prejudice of good order and military discipline,
in that he, at , on , when sentry over
provost prisoners while employed on fatigue duty in the barrack

yard, surreptitiously gave to No. , Private
Battalion, Regiment, one of the said prisoners, a pipe
and some tobacco

No. 71.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 40.
Regiment, a soldier of the Regular Forces, is charged with—
Conduct to the prejudice of good order and military discipline,
in that he, at , on , on returning as a
prisoner to the guard-room on remand, said, "What the
do I care for Captain [being the prisoner's command-
ing officer]. He may go to for me," or words to that
effect.

No. 72.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 40.
Regiment, a soldier of the Regular Forces, is charged with—
An act to the prejudice of good order and military discipline,
in that he, at , on , made use of, or [was
in possession of], a document purporting to be a genuine pass [to
be signed by], well knowing that it was not
genuine [so signed].

No. 73.

CHARGE-SHEET.

The prisoner, No. , Corporal , Battalion, Sec. 40.
Regiment, a soldier of the Regular Forces, is charged with—
Neglect to the prejudice of good order and military discipline,
in that he, at , on , after being duly warned
by Colour-Sergeant to parade the regimental defaulters
at 3 p.m. on that day, neglected to do so.

Note.—This form of charge is applicable when wilful disobedience is not
imputed.

No. 74.

CHARGE-SHEET.

The prisoner, No. , Serjeant , Battalion, Sec. 41.
Regiment, a soldier of the Regular Forces, is charged with—
Neglect to the prejudice of good order and military discipline,
in that he, at , between and , when in charge
of the recreation room, negligently conducted the supply
of refreshments authorised to be issued therein, and through
such negligence caused a loss to that institution of
[or thereabout].

No. 75.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 41.
Regiment, a soldier of the Regular Forces, is charged with—
When on active service committing the offence of murder,
in that he, at Ismailia, on [or about] , when on active
service, did feloniously, wilfully, and of malice aforethought kill
and murder one Humantoo, a native of the East Indies, a camp
follower.

No. 76.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 41.
Regiment, a soldier of the Regular Forces, is charged with—
(A.M.L.) 2 L 2

Committing a civil offence, that is to say, burglary,
 in that he, at , on , at about midnight,
 forced open the back door of the dwelling house of
 at , with intent to commit a felony [and feloniously
 took therefrom two silver candle-sticks value or
 thereabout.]

No. 77.

CHARGE-SHEET.

Sec. 41. The prisoner, No. , Private , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
Committing a civil offence, that is to say, robbery with violence,
 in that he, at , on , feloniously assaulted
 , and took from his person a silver watch and
 chain, value [or thereabout].

No. 78.

CHARGE-SHEET.

Sec. 41. The prisoner, No. , Private , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
 First: *Committing a civil offence, that is to say, theft,*
 in that he, at , on , [under pretence of
 making a purchase] stole from the shop of , a
 tobaccoconist, half a pound of tobacco or thereabout, value
 belonging to the said
 Secondly: *Committing a civil offence, that is to say, receiving*
stolen goods knowing them to have been stolen,
 in that he, at , on , was in possession of
 half a pound of tobacco or thereabout, value , the
 property of the said , which he knew to have been
 stolen.

No. 79.

CHARGE-SHEET.

Sec. 41. The prisoner, No. , Serjeant , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
Committing a civil offence, that is to say, forgery,
 in that he, at , on [or about] , with intent
 to defraud, forged the name of Captain to a post office
 order for four pounds two shillings and sixpence [and thereby
 obtained the sum of four pounds two shillings and sixpence].

No. 80.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
Committing a civil offence, that is to say, uttering counterfeit
coin,
 in that he, at , on , in a public-house
 known as the Royal Arms, uttered a counterfeit half-crown, know-
 ing the same to be counterfeit.

Note.—The offender utters counterfeit coin if he endeavours to pass it in
 payment of goods, &c., though it be not accepted, or if he tries simply to get
 it changed into other money.

SECOND APPENDIX.

FORMS AS TO COURTS-MARTIAL.

FORMS FOR ASSEMBLY OF COURTS-MARTIAL. App. II.

No. 1.—General.

Form of Order for the Assembly of a General Court-Martial.

orders by _____ commanding the
(Place, date.)

The detail of officers as mentioned below will assemble
at _____ on the _____ day of _____ for the purpose of
trying by a general courts-martial the prisoners [prisoner]
named in the margin [and such other prisoner or prisoners
as may be brought before them].*

PRESIDENT.

is appointed president.†

MEMBERS.

WAITING MEMBERS.

JUDGE-ADVOCATE.

Note.—
These mem-
bers and the
waiting
members
may be men-
tioned by
name, or
the number
and ranks
and the mode
of appoint-
ment may
alone be
named.

has been [or where the convening

App. II. *officer has the appointment of a judge-advocate is hereby]*
 appointed judge-advocate.

Prisoners [the prisoner] will be warned and all witnesses
 duly required to attend.

The proceedings will be forwarded to

Signed this day of

By Order,
 A.B.

* *Any opinion of the convening officer with respect to the composition of the Court (see Rules of Procedure 20 and 21) should be added here, thus:*

"In the opinion of the convening officer, officers of different corps are not, having due regard to the public service, available," or as the case may be.

† *Add here, if the president is under the rank of field officer, and the officer convening the Court is not under that rank, "In the opinion of the convening officer a field officer is not, having due regard to the public service, available."*

No. 2.—District.

Form of Order for the Assembly of a District Court-Martial.

orders by commanding

(Place, date.)

The detail of officers as mentioned below will assemble
 at on for the purpose of trying by
 district court-martial the prisoners [prisoner] named in the
 margin [and such other prisoner or prisoners as may be
 brought before them].‡

PRESIDENT.

is appointed president.§

MEMBERS.

Note.—
 These mem-
 bers and the
 waiting
 members (if
 any) may be
 mentioned
 by name, or
 the number
 and ranks
 and the
 mode of
 appointment
 may alone be
 named.

Prisoners will be warned and all witnesses duly required
 to attend.

The proceedings will be forwarded to
Signed this day of

App. II.

By Order,
A.B.

‡ Any opinion of the convening officer with respect to the composition of the Court (see Rules of Procedure 20 and 21) should be added here, thus :

“In the opinion of the convening officer, officers of different corps are not, having due regard to the public service, available,” or as the case may be.

§ If the president is under the rank of field officer, and the convening officer is not under that rank, after the words “appointed president,” add “In the opinion of the convening officer a field officer is not, having due regard to the public service, available,” and if the president is under the rank of captain add, “In the opinion of the convening officer a captain is not, having due regard to the public service, available.”

If a judge-advocate is appointed, his appointment will be notified or made in the same manner as in the Form of Order for the assembly of a general court-martial.

No. 3.—Regimental

Form of Order for the Assembly of a Regimental Court-Martial.

orders by commanding
(Place, date).

The officers mentioned below will assemble at
on for the purpose of trying by regimental court-martial the prisoners [prisoner] named in the margin [and such other prisoner or prisoners as may be brought before them.]

PRESIDENT.

is appointed president. ¶

MEMBERS.

App. II. Prisoners will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to

Signed this day of

By Order,
A.B.

¶ If the president is under the rank of captain, after the words "appointed president," add "the court-martial being held on the line of march," or "the court-martial being held on board the , a ship* commissioned by Her Majesty," or "in the opinion of the convening officer a captain is not, having due regard to the public service, available."

* If the ship is not Her Majesty's ship insert "not."

No. 4.—Field General.

Form of Order for the Assembly of a Field General Court-Martial.

At [state the place] in [state the country] this day of 18 .

Whereas complaint has been made to me, the undersigned, an officer in command of in the above-named country, that the persons named in the annexed Schedule, being subject to military law and under my command, have committed the offences in the said Schedule mentioned, being offences against the property or person of inhabitants of or residents in the above-named country, and I am of opinion that it is not practicable that those offences should be tried by an ordinary general court-martial:

I hereby order that the officers mentioned below shall assemble at on the day of for the purpose of trying the said persons by field general court-martial.

PRESIDENT.

is appointed president.

† These members will be mentioned by name.

MEMBERS.†

The prisoners will be warned and all witnesses duly **App. II.**
required to attend.

The proceedings will be forwarded to

Signed this day of

[Instruction.—*This order will be signed by the Officer who convenes the Court.*]

SCHEDULE.

Name* of alleged offender.	Offence charged.	* If the name of the person charged is unknown, he may be described as unknown, with such addition as will identify him.

No. 5.—Summary.

[See below, *Form of Proceedings.*]

No. 6.—Declaration for Suspension of Rules.

Form of Declaration of Military Exigencies or the Necessities of Discipline under Rule of Procedure 102.

In my opinion [*military exigencies, namely (*state them*)] * [or the necessities of discipline.]
render it [†impossible] to observe the provisions of rules‡
on the trial of by † [or inexpedient.]
court-martial assembled pursuant to the order of the ‡ State the rule or rules which cannot be observed. (See Rule 102.)
of
Signed at this day of A.B.

[Instruction.—*This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings.*]

App. II. FORM OF PROCEEDINGS OF COURTS-MARTIAL.

Form of Proceedings of a General Court-Martial (including some of the more unusual incidents which may occur to vary the ordinary course of procedure, with Instructions for the guidance of the Court).

PROCEEDINGS OF A GENERAL COURT-MARTIAL, held at
 18 on the day of
 , by order of Commanding
 18 , dated the day of

PRESIDENT.

<i>Rank.</i>	<i>Name.</i>	<i>Regiment.</i>
_____	_____	_____

MEMBERS.

<i>Rank,</i>	<i>Name.</i>	<i>Regiment.</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____, Judge-Advocate.

At o'clock the Court opens.
 Trial of*

* Here
 insert No.,
 Rank,
 Name, and
 Regiment,
 and appoint-
 ment (if
 any).

N.B.—The proper Army Forms, to be obtained from General Officers Commanding, will be used in accordance with the instructions.

The same Form will be used for district courts-martial and for field general courts-martial under section 49 of the Army Act, 1881, and will apply, as nearly as may be, with the substitution of "district" (or "field general" as the case requires) for "general," and with the omission, where there is no Judge-Advocate, of all reference to the Judge-Advocate.

For regimental courts-martial an Army Form will be used similar to the Form for a general court-martial, with the substitution of "regimental" for "general," and with the omission of all reference to the Judge-Advocate.

(1.) The order convening the Court is read, and [a copy thereof] is marked , signed by the president, and attached to the proceedings.

The charge-sheet and the summary [or abstract] of evidence are laid before the Court.

[Instruction.—All documents relating to the Court, or the matters before it, which are intended to form part of the proceedings (such as an order respecting military necessities, or a letter answering any question referred to the convening officer) at whatever period of the trial they are received should be read in open Court, marked so as to identify them, signed by the president, and attached to the proceedings.]

The Court satisfy themselves as provided by Rules of Procedure 22 and 23. App. II.

(2.)†
appears as prosecutor, and takes his place.

† Here state Rank, and Name, and Regiment (if any).

The above-named prisoner is brought before the Court.

VARIATION.

appears as counsel for the prosecutor.

appears to assist [or as counsel for] the prisoner.

The names of the president and members of the Court are read over in the hearing of the prisoner, and they severally answer to their names.

Do you object to be tried by me as president, or by any of the officers whose names you have heard read over ?

Question by the President to the prisoner.

No.

[Instruction.—The questions are to be numbered throughout consecutively in a single series. The letters Q. and A. in the margin may stand for Question and Answer respectively.]

Answer by the prisoner.

VARIATIONS.

CHALLENGING OFFICERS.

Answer.—I object to

Question to the Prisoner.—Do you object to any other officer ?

(This question must be repeated until all the objections are ascertained.)

Answer.—

Question to the Prisoner.—What is your objection to (the junior officer objected to) ?

Prisoner.—

The prisoner in support of his objection to requests permission to call , &c., &c.

is called into Court, and is questioned by the prisoner.

The Court is closed to consider the objection.

Decision.—The Court disallow the objection.

The Court is re-opened and the above decision is made known to the prisoner. Or,

Decision.—The Court allow the objection.

The Court is re-opened and the above decision is made known to the prisoner.

retires, or in the case of the president, the

Court adjourn.

Fresh Member.*— member of the Court.

takes his place as a

*Insert, Rank, Name, and Regiment.

He appears to the Court to be eligible and not disqualified to serve on this Court-Martial.

Question to Prisoner.—Do you object to be tried by (the fresh member) ?

Prisoner.—

Question to the Prisoner.—What is your objection to (the junior of the officers objected to) ?

(This objection will be dealt with in the same manner as the former objection.)

App. II.

The Court adjourn for the purpose of fresh members being appointed.

The Court are of opinion that, in the interests of justice and for the good of the service, it is expedient to adjourn for the purpose of fresh members being appointed, because *[here state the reasons]*.

At . o'clock on the Court resume their proceedings and an Order appointing another president *[or, fresh officers]* is read, marked and attached to the proceedings.

The Court satisfy themselves with respect to such president *[or, fresh officers]* as provided by Rule of Procedure 22.

[Instruction. — The procedure as to challenging a new president and fresh officers, and the procedure, if any objection is allowed, will be the same as above.]

The president and members of the Court as constituted after the above proceedings are as follows:—

PRESIDENT.		
Rank.	Name.	Regiment.
_____	_____	_____
MEMBERS.		
Rank.	Name.	Regiment.
_____	_____	_____
_____	_____	_____
_____	_____	_____

The President, Members, and Judge-Advocate are duly sworn (also any officer under instruction.)

[Instruction.—1. The witnesses if in Court should be ordered out of the Court at this stage of the proceedings.

2. Also any interpreter and short-hand writer should be now sworn.]

Question to
prisoner.
A.

Do you object to _____ as interpreter?

[Instruction.—In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.]

Q.

Do you object to _____ as short-hand writer?

A.

[Instruction.—In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.]

CHARGE-SHEET.

Charge-sheet.

(3.) The charge sheet is signed by the president, marked and annexed to the proceedings.

VARIATION.

App. II.

If the prisoner has claimed to be tried in lieu of submitting to the summary award of his commanding officer.

The prosecutor informs the Court that the prisoner is tried by this Court at his own request, in lieu of being dealt with summarily by his commanding officer.

The prisoner is arraigned upon each charge in the above mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read ? Question to the prisoner.

[Instruction.—Where there is more than one charge the foregoing question will be asked after each charge is read, the number of the charge being stated.] Answer.

VARIATIONS.

The prisoner objects to the charge.
What is your objection ?

Question to the prisoner.
A.

The Court is closed to consider their decision.
The Court disallow the objection [or, the Court allow the objection, and agree to report to the convening officer].
The Court is re-opened, and the above decision is read to the prisoner.
The Court proceed to the trial [or adjourn].

Decision.

^{or,}
The prisoner pleads to the general jurisdiction of the Court.

Plea to jurisdiction.

What are the grounds of your plea ? Question to the prisoner.

Do you wish to produce any evidence in support of your plea ? A.
Q.

Witness is examined on oath. A.

[Instruction.—The examination, &c., of the witnesses called by the prisoner and of any witnesses called by the prosecutor in reply will proceed as directed below in paragraph (5). The prosecutor will be entitled to reply after all the evidence is given]. Witnesses.

The Court is closed to consider their decision.
The Court allow [or overrule the plea, or resolve to refer the point to the convening authority, or decide specially that]. Decision.

The Court is re-opened, and the above decision is read to the prisoner.

The Court proceed to the trial [or adjourn].

As the prisoner does not plead intelligibly [or refuses to plead to the above charge, or does not plead guilty to the above charge] the Court enter a plea of "not guilty." Refusal to plead.

App. II. As the prisoner does not plead "guilty" to all the charges, the Court proceed with the trial as if he had not pleaded "guilty" to any charge.

PROCEEDINGS ON PLEA OF GUILTY.

(4.) [Instruction.—*If the trial proceeds upon any charges to which there is a plea of not guilty, the Court will not proceed upon the plea of guilty until after the finding on those other charges; in that case the charge to which the prisoner has pleaded guilty must be read to him again before the following question is asked.*]

Question to the prisoner. (a) Do you wish to make any statement in reference to this charge to which you have pleaded guilty?

The prisoner in reference to the charge says:—

A. [Instruction.—*The substance of the prisoner's statement must be taken down, and should be taken down in the first person, as nearly as possible in his own words.*]

VARIATION.

The Court being satisfied from the statement of the prisoner that he did not understand the effect of the plea of guilty alters the plea recorded, and enters a plea of not guilty.

[Instruction.—*The Court will then proceed in respect of this charge as in paragraph 5.*]

Finding of "guilty." The Court find, in pursuance of the above plea, that the prisoner [Number—name—rank—regiment] is guilty of the charge [all the charges]:

or

is guilty of the charge, and is not guilty of the

The summary of evidence [or abstract of evidence] is read, marked, signed by the President, and attached to the proceedings.

[Instruction.—*If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence and to enable the confirming officer to know all the circumstances connected with the case will be taken as in paragraph 5. No address will be allowed.*]

Question to the prisoner. Do you wish to call any witnesses as to character?

Yes. [No.]

[Instruction.—(1) *The examination, &c., of witnesses as to character will proceed as in paragraph 6.*

(2) *Evidence as to character and particulars of service will be taken as in paragraph 10.*]

Question to the prisoner. Do you wish to make any statement in mitigation of punishment?

No. or

(a) It will be desirable to enter on the proceedings a statement that the requirements of Rule 35 (B) (see note and Chap. III, para. 53) have been complied with.

The prisoner in mitigation of punishment says [or if the statement is in writing, hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.] App. II.

[Instruction.—If the prisoner's statement is not in writing, and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If the statement is not in writing and not delivered by the prisoner himself the material portions should be recorded.

In either case any matter which is requested by or on behalf of the prisoner to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment.]

VARIATION.

The Court give permission to the prisoner to call witnesses to prove his above statement that [here specify the statement which is to be proved.]

[Instruction.—(1.) The examination, &c., of witnesses called in pursuance of this permission will proceed in the same manner as witnesses to character called under paragraph 6.

(2.) The procedure as to sentence, recommendation to mercy, and confirmation will be as in paragraphs 10 and 12].

PROCEEDINGS ON PLEA OF NOT GUILTY.

(5.) [If the prosecutor makes an address.] The prosecutor makes the following address, [or, if the address is written, hands in a written address, which is read, marked , signed by the President, and attached to the proceedings.]

[Instruction.—Where the address of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.]

The prosecutor proceeds to call witnesses.

(*) being duly sworn is examined by the prosecutor,

Cross-examined by the Prisoner.

Re-examined by the Prosecutor.

First witness for prosecution.

* State his name, his number, rank, and regiment (if any), or other description.

App. II.

Examined by the Court.

His evidence is read to the witness as directed by Rule of Procedure 81 (B.)

The witness withdraws.

VARIATIONS.

The prisoner declines to cross-examine this witness.

[Instruction.—*In every case where the prisoner does not cross-examine a witness for the prosecution this statement is to be made, in order that it may appear on the face of the proceedings that he has had the opportunity given him of cross-examination.*

The Court, at the request of the prisoner, allows the cross-examination of the witness to be postponed.

The prisoner [or the prosecutor] objects to the following question :

The Court is closed to consider their decision.

The Court overrule [or allow] the objection, and the Court is re-opened and the decision announced.

The witness, on his evidence being read to him, makes the following explanation or alteration :—

Examined by the prosecutor as to the above explanation or alteration.

Examined by the prisoner as to the above explanation or alteration.

The prosecutor and prisoner decline to examine him respecting the above explanation or alteration.

Second witness for prosecution

duly sworn, is examined by the prosecutor.

(*The examination, &c., of this and every other witness proceeds as in the case of the 1st witness.*)

VARIATION.

The Court think it expedient to continue to sit after six o'clock in the afternoon, on the ground that [state the grounds].

Adjournment.

At the o'clock the Court adjourn until o'clock on the

On the of 18 , at o'clock, App. II.
the Court re-assemble, pursuant to adjournment, present
the same members as on the of Second day.

VARIATIONS.

[Instructions—(1) *If a member is absent, and his absence will reduce the Court below the legal minimum, and it appears to the members present that the absent member cannot attend within a reasonable time, the president or senior member present will thereupon report the case to the convening officer.*

(2) *If either the President or the Judge-Advocate is absent, and cannot attend within reasonable time, the Court will adjourn, and the President or senior member present will thereupon report the case to the convening authority. (See Rule of Procedure 65).]*

(Rank—Name—Regiment) being absent.

Absent member.

(The absence is accounted for.)

A medical certificate [or letter, or as the case may be] is produced, read, marked , and attached to the proceedings.

The Court adjourn until

or,

There being present (not less than the legal minimum) members, the trial is proceeded with.

An order bearing date , appointing (the New President.
senior member) president of the Court-martial in the place
of who is read, marked , signed by
the President, and attached to the proceedings.

The trial is proceeded with.

An order, bearing date , appointing to act as New Judge
Judge-Advocate in the place of , who is read, Advocate.
marked , signed by the President, and attached to
the proceedings, and is duly sworn.

The trial is proceeded with.

[Instructions.—(1) *If the Court, in consequence of the adjournment having been prolonged by the senior officer on the spot, or otherwise, do not meet on the day to which they previously adjourned, or if the adjournment was until further orders, the words "pursuant to adjournment" will be omitted from the above Form, and the cause of their meeting at the above time will be entered in the proceedings.*

(2) *If the place of meeting has been altered by orders, or otherwise, the place of meeting and the reason for meeting at that place will be entered in the proceedings.*

Examination [cross-examination] of continued.

The prosecution is closed.

DEFENCE.

Do you intend to call any witnesses in your defence ?

Yes. [No].

(A.M.L.)

Question to prisoner.
A.

2 M

App. II. Is he a witness as to character only?

9.
4.

VARIATION.

[If the prisoner is defended by counsel or by an officer having the rights of counsel.]

Do you wish to make any statement in addition to the address made by your counsel [*or*] ?

(6.) *[Instruction.—If the prisoner calls no witnesses, or witnesses as to character only, adopt this and omit (7).]*

If a prisoner is defended by counsel or an officer having the rights of counsel, and does not wish to make a statement in addition to the address by such counsel or officer, adopt this and omit (7).]

The prosecutor addresses the Court upon the evidence for the prosecution as follows [*or, if the address is written, hands in a written address, which is read, marked*], signed by the President, and attached to the proceedings.]

[Instruction.—Where the address of the prosecutor is not in writing the Court should record so much as appears to them material and so much as the prosecutor requires to be recorded.]

Question to
prisoner.

Have you anything to say in your defence ?

VARIATION.

The Court, at the request of the prisoner, adjourn until to enable him to prepare his defence.

The prisoner in his defence says [*or*], hands in a written address, which is read, marked, signed by the President, and attached to the proceedings.]

VARIATION.

[Instruction.—If the prisoner is defended by counsel or by an officer having the rights of counsel.]

Do you wish to make any statement in addition to the address made by your counsel [*or*] ?

[Instruction.—If a prisoner's address is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.]

If the address is not in writing and not delivered by the prisoner himself, the material portions should be recorded.

In either case any matter which is requested by or on behalf of the prisoner to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]

First witness
as to character.

The prisoner calls the following witnesses as to character:

*

is duly sworn.

Examined by the Prisoner.

App. II.

* Insert name, and his number, rank, and regiment (if any), or other description.

Cross-examined by the Prosecutor.

Re-examined by the Prisoner.

Examined by the Court.

His evidence is read to the witness as directed by Rule of Procedure 81 (B).

The witness withdraws.

VARIATION.

The prosecutor declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following explanation or alteration.

Examined by the prisoner as to the above explanation or alteration.

Examined by the prosecutor as to the above explanation or alteration.

The prisoner and prosecutor decline to examine him respecting the above explanation or alteration.

(7.) [Instruction.—If the prisoner calls witnesses who are not as to character only, or if a prisoner defended by counsel, or by an officer having the rights of counsel, wishes to make
(A.M.L.)

App. II. *a statement in addition to the address by such counsel or officer, omit Par. (6) and adopt (7).]*

Question to prisoner.

Have you anything to say in your defence?

VARIATION.

The Court, at the request of the prisoner, adjourn until to enable him to prepare his defence.

The prisoner in his defence says [or if his address is in writing, hands in a written address, which is read, marked], signed by the President, and attached to the proceedings].

[Instructions.—(1) *If a prisoner's defence is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.*

(2) *If the address is not in writing and not delivered by the prisoner himself, the material portions should be recorded.*

(3) *In either case, any matter which is requested by or on behalf of the prisoner to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]*

The prisoner calls the following witnesses :

* Insert the name, and his No., Rank, and Regiment, if any, or other description.

*

is duly sworn

Examined by the Prisoner.

Cross-examined by the Prosecutor.

Re-examined by the Prisoner.

Examined by the Court.

His evidence is read to the witness, as directed by Rule App. II. of Procedure 81 (B).

The witness withdraws.

VARIATIONS.

The prosecutor declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following explanation or alteration.

Examined by the prisoner as to the above explanation or alteration.

Examined by the prosecutor as to the above explanation or alteration.

The prisoner and prosecutor decline to examine him respecting such explanation or alteration.

[Where the prisoner is defended by counsel or an officer having the rights of counsel.] The prisoner makes the following statement in addition to his address by his counsel [or].

The prosecutor [by leave of the Court] calls witnesses in reply.

The prisoner makes the following address [or, if the address is in writing, hands in a written address, which is read, marked , signed by the President, and attached to the proceedings].

The prosecutor makes the following reply [or, if the reply is in writing, hands in a written reply, which is read, marked , signed by the President, and attached to the proceedings];

or,

The prosecutor declines to make a reply.

[Instruction.—Where the reply of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.

If the prisoner's address is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If the address is not in writing and not delivered by the prisoner himself, the material portions should be recorded.

In either case, any matter which is requested by or on behalf of the prisoner to be recorded should be recorded, and

App. II. *care must be taken whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment].*

The Judge-Advocate makes the following summing up [or if the summing up is in writing, hands in a written summing up, which is read, marked _____, signed by the President, and attached to the proceedings].

VARIATIONS.

The Court, at the request of the prisoner, adjourn until to enable him to prepare his address.

The Court at the request of the prosecutor, adjourn until to enable the prosecutor to prepare his reply.

The Judge-Advocate and the Court think a summing up unnecessary.

or,
The Court, at the request of the Judge-Advocate, adjourn until _____ to enable him to prepare his summing up.

FINDING.

Finding. (8.) The court is closed to consider their finding.

Not Guilty. The Court find that the prisoner (No.—Name—Rank—Regiment) is not guilty of the _____ charge [and honourably acquit him of the same], but is guilty of the _____ ;

or,
Guilty. is guilty of the charge [all the charges] ;

or,
is guilty of the _____ charge, and guilty of the charge with the exception of the words [or with the exception that]

or,
Special Findings. is not guilty of desertion, but is guilty of absence without leave ;

[Instruction.—Any special finding allowed by Section 56 of the Army Act, 1881, may be expressed in this form.]

or,
find that the prisoner did [Here set out such particulars in any charge as the Court find to be proved], but the Court doubt whether such facts constitute in law the offence stated in the _____ charge, or in the _____ charge, and therefore they find him guilty of the offence in such one of those charges as the facts in law constitute ;

or,
adjourn for the purpose of consulting the convening officer (a) ;

On re-assembly on the _____ day of _____, and on _____

(a) Note.—If the officer consulted is, as will often happen, confirming officer, "confirming" should be substituted for "convening."

reading the opinion of which is marked App. II.
and annexed to the proceedings, find that the prisoner, &c.

PROCEEDINGS ON ACQUITTAL OF ALL THE CHARGES.

(9.) The Court find that the prisoner (*No.—Rank—Name—Regiment*) is not guilty of the charge [*or all the charges*];
or,
is not guilty of the charge [*or all the charges*] and honourably acquit him of the same. *Acquittal.*

The findings are read in open Court, and the prisoner is released.

Signed at , this day of 18 .
(Judge-Advocate.) (President.)

VARIATION.

The Court find that the prisoner [*No.—Rank—Name—Regiment*] is, by reason of insanity, unfit to take his trial; *Insanity.*

or,
is guilty of the charge or charges,
but was insane at the time of the commission of the
offences specified in those charges.

Signed at , this day of .
(Judge-Advocate.) (Signature) (President.)

Confirmed,
At this day of
(Signature of Confirming Authority.)

PROCEEDINGS ON CONVICTION.

Before Sentence.

(10.) The Court being re-opened, the prisoner is again brought before it. *Evidence of Character, &c.*

(*Rank—Name—Regiment*) is duly sworn.

Have you any evidence to produce as to the character and particulars of service of the prisoner? *Question by the President.*

I produce this statement.

The witness hands in the statement, which should be in the following form: *Answer by the witness.*

STATEMENT as to CHARACTER and PARTICULARS of
SERVICE of PRISONER.

Rank—Name—No. , of *Regiment* [*or as the case may be*].

(1) The following is a fair and true summary of the entries of the prisoner's name in the (a) defaulters' book, exclusive of convictions by a court-martial or a civil court:—

(a) The forms issued by the War Office insert "Troop or Company."

App II.

	Within last 12 months.	Since Enlistment.
For	,	times
For		times

or,

The prisoner's name does not appear in the defaulters' book.

[Instruction.—*If the charge is for drunkenness, the entries for drunkenness must be stated separately.*]

(2) The prisoner has not been previously convicted.

or,

The previous convictions of the prisoner by a court-martial or a civil court are set out in the Schedule annexed to this statement.

(3) The prisoner is not under sentence at the present time.

or,

The prisoner at the present time is under sentence for beginning on the day of .

(4) The prisoner has been in confinement, awaiting trial on the present charges for (a) , beginning on the day of .

(5) The prisoner's age (b) is stated in his attestation paper to be .

(6) The date of his attestation specified in his attestation paper is .

(7) The service which the prisoner is allowed to reckon towards discharge or transfer to the reserve is .

(8) The prisoner is entitled to deferred pay in respect of service.

(9) The prisoner is entitled to reckon service for the purpose of determining his pension, &c.

[Instruction.—*If the Court is a general or district court-martial there should be added to the above the following*]:—

(10) The prisoner is in possession of or entitled to no military decoration or military reward which the Court can forfeit [or is in possession of or entitled to (*state any military decoration or reward which the Court can forfeit*)].

(11) (*If the prisoner is a warrant officer not holding an honorary commission.*) The prisoner before he was made a warrant officer last held the regimental rank of .

(12) (*In the case of an officer or a warrant officer holding an honorary commission.*) The prisoner holds in the army the [honorary] rank of dated , and in his regiment [or corps or department] the rank of dated .

(a) The blank should be filled up with the number of days.

(b) The forms issued by the War Office substitute, "The prisoner's present age according to his attestation paper is ."

[Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.] App. II.

SCHEDULE

Of convictions by a court-martial or civil court of prisoner, No. Rank , Name , of regiment [or as the case may be].

[Instruction.—A verbatim extract from the regimental books stating these convictions must be inserted.]

I hereby certify that the foregoing schedule of convictions is a true extract from the regimental books in my custody.

Signed this day of .

A.B.

The above statement [with the schedule of convictions] is read, is marked , signed by the President and annexed to the proceedings.

Is the prisoner the person named in the statement which you have heard read ? Question by the President.

Answer by the witness.

Have you compared the contents of the above statement with the regimental books ? Q.

A.

Are they true extracts from the regimental books, and is the statement of entries in the defaulters' book a fair and true summary of those entries ? Q.

A.

Cross-examined by the Prisoner.

Re-examined.

Or, the prisoner declines to cross-examine this witness.

[Instruction.—Any further question will be put and any evidence produced which the Court require as to any point respecting the character and service of the prisoner on which the Court desire to have information for the purpose of their sentence.

At the request of the prisoner, or by the direction of the Court, the regimental books, or a certified copy of the material entries therein, must be produced for the purpose of comparison with the statement.

App. II. *The prisoner is entitled to call the attention of the Court to any entries in the regimental books, or in the certified copy above mentioned, and to show that they are inconsistent with the statement.]*

The Court is closed to consider their sentence.

SENTENCE.

[Instruction.—*The provisions of section 44, 182, and 183 of the Army Act, 1881, must be carefully attended to by the Court in passing sentence.*]

Sentence.

The Court sentence the prisoner (*No.—Rank—Name—Regiment.*)

[Instruction.—*The sentence is to be marginally noted in every case.*]

In the case of an officer :—

Death.

(a) to suffer death by being shot [hanged].

Penal servitude years.

(b) to suffer penal servitude for the term of years [or for life.]

Imprisonment H.L. for

(c) to be imprisoned [with hard labour] for

[Instruction.—(1) *As to the term of imprisonment see below in the case of a soldier.*

(2) *A sentence of cashiering should precede a sentence to imprisonment or penal servitude.*]

Cashiered.

(d) to be cashiered.

Dismissed.

(e) to be dismissed from Her Majesty's service.

Forfeiture of rank.

(f) [*Where the officer's army rank is superior to his regimental rank.*]

To take rank and precedence as in the regiment as if his appointment to that regiment bore date the day of , and to take rank and precedence in the army as if his appointment as bore date the day of .

[*Or, where the officer's army and regimental rank are the same.*]

To take rank and precedence in the regiment and in the army as if his appointment as bore date the day of .

[*Or, where the officer has no regimental rank.*]

To take rank and precedence in the army as if his appointment as in the army bore date the day of .

[Instruction.—*In each case the form may be varied so that the Court may exercise the power under the Army Act, 1881, s. 44 (f), and Rule of Procedure 46 of sentencing to forfeiture of seniority either in the corps, or in the army, or in both.*]

In the case of an officer in the Indian Staff Corps (see s. App. II. 180 (2) (e)).

- To forfeit years [or all] of his staff service [and army service], or as the case may be.
- (g) to be reprimanded [or severely reprimanded]. *Reprimand, or severe reprimand.*
- (h) to forfeit the [state the medal, clasp, and decoration, or any of them, which is to be forfeited] with any annuity or gratuity attached thereto.
- (i) to be put under stoppages of pay until he has made good the sum of , or as the case may be.

In the case of a soldier :—

- (j) to suffer death by being shot [hanged]. *Death.*
- (k) to suffer penal servitude for the term of years [or for life]. *Penal servitude years.*
- (l) to suffer summary punishment, that is to say, field imprisonment No. 1, for days. *Field imprisonment No. 1.*
- (m) to suffer summary punishment, that is to say, field imprisonment No. 2, for days. *Field imprisonment No. 2.*
- (n) to be imprisoned (a) [with hard labour] for . *Impt. H.L. for*
- [Instruction.—(1) *If a prisoner at the time of sentence is undergoing imprisonment under a former sentence, the new sentence must not exceed such a term as will make up a period of two years from the date of the former sentence.*

(2) *In the case of a non-commissioned officer, a sentence of reduction to the ranks should precede a sentence to imprisonment or penal servitude, although the latter sentence necessarily involves a reduction to the ranks.]*

- (n) to be discharged with ignominy from Her Majesty's service. *Discharge with ignominy.*
- (o) [if a volunteer] to be dismissed from Her Majesty's service. *Dismissed.*
- (p) [if a non-commissioned officer (b)].
- (1) To be reduced to the rank of serjeant ; or *Reduction.*
- (2) To be reduced to the rank of corporal ; or
- (3) To be reduced to the rank of bombardier ; or To be reduced to the rank of second corporal ; or
- (4) To be reduced to the ranks.
- (q) to be fined. *Fined l. s. d.*
- (r) to be put under stoppages of pay until he has made good the value of the following articles, viz. :— *Stoppages.*

(a) As to form of sentence and reference to calendar months, see Q.R., 1885, Sect. VI. para. 101.

(b) A sentence of reduction from or to an acting rank is void ; e.g., a sentence on a corporal to be reduced to the rank of lance-corporal is void. So also is a sentence on a lance-corporal to be reduced to the ranks. See s. 183 (3), note.

App. II.

Forfeitures.

or [and] until he shall have made good the sum of
 , in respect of [state the cir-
cumstances in respect of which the same is awarded.]
 (s) to forfeit [state number or all] Good-
 Conduct badge [or badges] with the pay
 attached thereto.
 to forfeit deferred pay in respect of [all
 or calendar months or years] previous service.
 to forfeit [all or years, or
 calendar months] past service for the purpose of
 determining pension.
 to forfeit the [state medal, clasp, and decora-
tion, or any of them, which is to be forfeited] with any
 annuity or gratuity attached thereto (a).

[Instruction.—(1) *An offender may be sentenced to all or any of the above forfeitures.*

(2) *In the case of a warrant officer, a district court-martial must use one of the following forms; a general court-martial may use them in lieu of, or in addition to, the foregoing forms, see s. 182 (2).]*

(t) To be dismissed from the service.

or,

(u) To be suspended from rank, pay, and allowances
 for the period of .

or,

(v) To be reduced in the list of his rank as if his
 appointment thereto bore date the
 day of .

or,

To be reduced to an inferior class of warrant
 officer; that is to say to .

or,

(w) [*If he was originally enlisted as a soldier, but not
 otherwise*]

To be reduced to the ranks.

RECOMMENDATION TO MERCY.

The Court recommend the prisoner to mercy on the
 ground that .

The Court recommend that . of the service
 forfeited under section 79 of the Army Act, 1881, shall be
 restored on the ground that .

(a) Under the Royal Warrant, a soldier convicted of desertion, fraudulent enlistment, or an offence under s. 17 or 18 of the Army Act, and a soldier sentenced to penal servitude or to be discharged with ignominy, forfeits all medals and decorations without any award by the court-martial. In such cases therefore an award should not be made.

SIGNATURE.

App. II.

Signed at _____, this _____ day of _____ 18 ____.
 (Signature) (Signature)
 Judge-Advocate. President.

REVISION.

(11.) At _____, on the _____ day of _____ Revision.
 at _____ o'clock, the Court re-assemble by order of _____
 for the purpose of re-considering their _____
 Present, the same members as on the _____.

VARIATION.

[Instructions.—If a member is absent and the absence will reduce the Court below the required minimum, or he is the president, and it appears to the members present that such absent member cannot attend within a reasonable time, the president, or in his absence, the senior member present shall thereupon report the case to the convening officer.]

[Rank, name, regiment] being absent.]

[The absence is accounted for.]

Absent member.

A medical certificate [or letter, or as the case may be] is produced, read, marked _____, and attached to the proceedings.

There being present _____ [not less than the required minimum] members the Court proceeds.

The letter [order or memorandum] directing the re-assembly of the Court for the revision, and giving the reasons of the confirming authority for requiring a revision of the [finding] [finding and sentence] [or sentence] is read, marked _____, signed _____ Revised finding.

The Court having attentively considered the observations of the confirming authority, and the whole of the proceedings.

a. do now revoke their finding and sentence, and are of opinion, &c.,

or

b. do now revoke their sentence, and now sentence the _____ prisoner, &c., &c., Sentence.

or,

c. do now respectfully adhere to their sentence or [finding and sentence].

Signed at _____, this _____ day of _____ 18 ____.
 Judge-Advocate. President.

CONFIRMATION.

(12.) Confirmed,

Confirmation.

or,

I vary the sentence so that it shall be as follows and confirm the finding and the sentence as so varied,

or,

I confirm the finding and sentence of the Court, but [mitigate, remit, or, commute _____].

or,

App. II. [Where it is necessary to confirm the special finding on several alternative charges,]

I confirm the finding on _____ and charges, and I confirm the special finding relating to the _____ and charges, and declare that that finding amounts to a finding of guilty on the _____ charge, and of not guilty on the _____ and charges.

I confirm the sentence [but mitigate, remit, or commute];

or

[Where the confirming officer desires partly to reserve his confirmation,]

I confirm the finding of the Court on the _____ and charges and reserve for confirmation by superior authority the finding on the _____ and charges, and the sentence;

or,

I confirm the findings of the Court, but reserve the sentence for confirmation by superior authority;

or,

I confirm the findings of the Court and the sentence of the Court as to _____, and reserve the sentence so far as it _____ for confirmation by superior authority.

Signed at _____, this _____ day of _____ 18 ____.
(Signature of Confirming Authority.)

[Instruction.—Any remarks of the confirming authority are to be added separately after the confirmation, and a space of at least half a page is to be left for the purpose.]

[Where the declaration respecting a special finding on alternative charges is added subsequently to the confirmation (Rule 54),]

I declare that the special finding relating to the _____ and charges amounts to a finding of guilty on the _____ charge, and of not guilty on the _____ and charges.

Signed at _____ this _____ day of _____ 18 ____.
(Signature of authority.)

FORM OF SUMMONS.

Form of Summons to a Civil Witness.

To

Whereas a _____ court-martial has been ordered to assemble at _____ on the _____ day of _____ 18 __, for the trial of _____, of the _____ regiment. I do hereby summon and require you A. _____ B. _____ to attend, as a witness, the sitting of the

said Court at _____ on the _____ day of _____
at _____ o'clock in the forenoon [and to bring with you
the documents hereinafter mentioned, namely, _____],
and so to attend from day to day until you shall be duly
discharged, whereof you shall fail at your peril.

App. II.

Given under my hand at _____ on the _____ day of _____
18 _____.

(Signature)

Convening Officer [or Judge-Advocate
or President of the Court or Com-
manding Officer of the Prisoner].

FORM FOR ASSEMBLY AND PROCEEDINGS OF SUMMARY COURT-MARTIAL (a.)

PROCEEDINGS.

*At _____, this _____ day of _____ 18 _____.
Whereas it appears to me that the persons named in
the annexed schedule and being subject to military law
have committed the offences in the said schedule men-
tioned, and I, the undersigned, an officer now in command
of _____

* State the
place.
A. Order
convening
the court.

on active service, am of opinion that it is not practicable,
having due regard to the public service, to convene an
ordinary court-martial to try such offences [†or to delay
the trial for reference to a superior qualified officer], I
hereby convene a summary court-martial to try the said
persons, and to consist of _____

† Omit ex-
cept where
convening
officer is not
a command-
ing officer
and is below
rank of field
officer.

PRESIDENT.

Rank.

Name.

Regiment.

MEMBERS.

Rank.

Name.

Regiment.

[†I am of opinion that three officers are not available
having due regard to the public service.]

(Signed)

† Omit ex-
cept where
the court-
martial
consists of
two officers
only.

I certify that the above Court assembled on the
day of _____ and duly tried the persons named in

B. Certificate
of president
as to pro-
ceedings.

(a) See Rule 106 (B).

App. II. the said schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that schedule.

Signed this day of

C— D—

President of the Court-martial.

C. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the above schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences; and I am of opinion, with reference to the sentences of summary punishment mentioned in the schedule, that imprisonment cannot, with due regard to the public service, be carried into execution, [*and I am of opinion that it is not practicable, having due regard to the public service, to delay the cases for confirmation by any superior qualified authority].

* Omit excepting where under rules it is ordinarily the duty of the confirming officer to reserve the case.

Signed this day of 18 .

E— F—

Field [or General] Officer in the force [or commanding].

D. Confirmation of reserved sentences.

I have dealt with the reserved findings and sentences in the manner stated in the last column of the schedule, and, subject to what I have there stated, I hereby confirm the said reserved findings and sentences.

Signed this day of

G— H—

General [Field] Officer in the force.

E. Confirmation of sentence of death or penal servitude.

Subject to what I have stated in the last column of the schedule, I hereby confirm the [finding and] sentence of death in the case of and of penal servitude in the case of [†and in the case of the above sentences of death I am of opinion that by reason of† it is not practicable, having due regard to the public service, to delay the case for confirmation by any qualified officer superior to myself].

† Omit where confirmed by officer in chief command.

Signed this day of

J— K—

General [Field] Officer in chief command of the forces.

‡ State according to the circumstances, the nature of the country, or the great distance, or the operations of the enemy.

SCHEDULE.

App. II.

Date	18 .	No.		
Name of alleged Offender.*	Offence charged.	Plea.	Finding, and if convicted, sentence.†	How dealt with by confirming Officer.
Peter Smith (sutler)	Offence against person of inhabitant of country	Guilty	Guilty. Field imprisonment No. 1 for .	Confirmed. I remit <i>E— F—</i>
262, Private James Robinson, 167th Regt.	Breaking into house in search of plunder	Not guilty	Guilty. Two months' imprisonment	Not confirmed. <i>E— F—</i>
564, Private Thomas Jones, 167th Regt.	Drunk on post	Not guilty	Guilty. Death. Recommended to mercy	Reserved. [or Confirmed, but commuted to field imprisonment No. 1 for <i>E— F—</i> Confirmed, but commuted to years' penal servitude. <i>J— K—</i>
Person accompanying force (name unknown), white jacket and trousers, scar on right cheek	Impeding provost-marshal	Not guilty	Not guilty	
Soldier in uniform of 167th Regt. (name unknown)	Offence against property of inhabitant of country	Not guilty	Guilty. Field imprisonment No. 2 for .	Reserved. <i>E— F—</i> Confirmed. <i>G— H—</i>
<i>P— Q—</i> Convening Officer.		<i>C— D—</i> President.		

* If the name of the person charged is unknown, he may be described as unknown, with such addition as will identify him.

† Recommendation to mercy to be inserted in this column.

THIRD APPENDIX.

FORMS OF COMMITMENT.

App. III.

FORM A.

Form of Order for commitment to Prison of Military Convict sentenced in the United Kingdom to Penal Servitude.

Whereas [*Name—No.—Rank*], of the _____ regiment, was by general court-martial held at _____, convicted of the offence of _____ (a), and, by a sentence signed on the _____ day of _____ 18____, sentenced (b) to suffer penal servitude, for _____ years, commencing on the aforesaid day, and such sentence has been confirmed by _____, as required by law.*

* Add, if necessary, "with a remission of _____ years."

Now therefore, I, the undersigned, the (c) _____ do hereby in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined either permanently or temporarily, there to undergo his sentence according to law.

And I do hereby in pursuance of the above-mentioned Acts and powers order the governor or chief officer of any such prison to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

Signed this _____ day of _____ 18____. C.D.

(a) If there are several offences state all of them. An offence should be stated in the words of the charge on which the convict was convicted, but if modified by the finding, as so modified; omitting the statement of particulars giving the details of time, place, and circumstances.

(b) Where the sentence was death but has been commuted to penal servitude, substitute "to suffer death and such sentence was confirmed by _____, as required by law, and was commuted to _____ years' penal servitude, commencing on the aforesaid day."

(c) "Commanding officer of the said convict," or "field marshal commanding-in-chief," or "adjutant-general," or "officer commanding the military district where the said convict is," as the case may be, or, where the convict is in Ireland, "the general commanding the forces in Ireland."

FORM B.

App. III.

Form of Order for commitment to Prison of Military Convict sentenced in India, or a Colony, or a Foreign Country, to Penal Servitude.

Whereas [*Name—No.—Rank*], of the _____ regiment, was by a general court-martial held at _____, convicted of the offence of _____ (a), and by a sentence signed on the _____ day of _____ 18____, sentenced (b) to suffer penal servitude for _____ years, commencing on the aforesaid day, and such sentence has been confirmed by _____, as required by law.*

* Add, if necessary, "with a remission of _____ years."

Now, therefore, I, the undersigned, the (c) do hereby in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in the United Kingdom in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily, there to undergo his sentence according to law.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the governor or chief officer of any such prison as aforesaid to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And for the above purpose, I, the undersigned, do hereby further, in pursuance of the above-mentioned Acts and powers, order that the said convict be removed in military custody by [*here state route*], or such other route as may be directed by proper authority, to the port at _____ or such other port as may be directed by proper authority, thence to be removed by [*here state route*] to such prison as aforesaid in the United Kingdom.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the officer or non-commissioned

(a) If there are several offences state all of them. An offence should be stated in the words of the charge on which the convict was convicted, but if modified by the finding, as so modified; omitting the statement of particulars giving the details of time, place, and circumstances.

(b) Where the sentence was death but has been commuted to penal servitude, substitute "to suffer death and such sentence was confirmed by _____, as required by law, and was commuted to _____ years' penal servitude, commencing on the aforesaid day."

(c) "Commander-in-chief of the forces in India [*or the presidency in India*], "adjutant-general in India [*or the presidency in India*]," "officer commanding the forces in the colony of _____ or "officer commanding the military district [*or station*] where the said convict is," as the case may be, or, if the convict was sentenced in a foreign country, "officer commanding the army [*or force*] with which the said convict was serving at the time of his being sentenced," or "officer commanding the military district [*or station*] where the said convict is," or if he has been brought into India or a colony, any of the officers before in this note mentioned.

(A.M.L.)

2 N 2

App. III. — officer in charge of any provost prison, and also the governor or chief officer of any other prison, military or civil, to whom the convict is brought, to receive the said convict, and detain him so long as appears reasonably necessary with the view to his said removal, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed this day of 18 .
C.D.

In case an Alteration of the Route above-mentioned becomes necessary. (a.)

Whereas for the purpose of better carrying into effect the above order for the removal of the above-mentioned convict to the United Kingdom, it is necessary to alter the route above-mentioned, I, the undersigned, the (b), do hereby, in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order that the said convict be removed in military custody by [here state the route so far as varied] to , thence to be removed as directed by the said order.

Signed at this day of 18 .
E.F.

In case of need the following Order may be made.

For the purpose of carrying into effect the above order, I, the undersigned, the officer commanding the military (c) district where the above convict is, do hereby, in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of prison at , to receive the above-named convict, and to detain him until he can be removed to and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at this day of 18 .
G.H.

(a) This order can be repeated by any removing authority as often as necessary.

(b) "Officer commanding the military district [or station] where the above convict is," or "commander-in-chief of the forces in India [or the presidency in India]," or "adjutant-general in India, [or the presidency in India]," or "officer commanding the forces in the colony of " as the case may be.

(c) If necessary substitute "station" for district. This order may also be made by any of the officers mentioned in note (c), p. 539.

FORM C.

App. III.

Form of Order for Commitment to Prison, Military or Civil, of Military Prisoners sentenced either in or out of the United Kingdom to Imprisonment.

To the governor or chief officer in charge of (a) prison at

Whereas [*Name—No.—Rank*], of the regiment, was by a (b) court-martial held at convicted of the offence of , (c), and by a sentence signed on the day of 18 , sentenced (d) to be imprisoned with *hard labour for , commencing on the aforesaid day, and such sentence has been confirmed by , as required by law (e).

* If the sentence does not specify hard labour alter "with" into "without."

Now, therefore, I, the undersigned, the (f)

do hereby, in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order you to receive the said military prisoner into your custody and detain him to undergo his said sentence according to law, and for so doing this shall be your warrant.

Signed at this day of 18 .

C.D.

(a) Insert "Her Majesty's" or as required according to title of prison.

(b) Insert as required "general," "district," "regimental."

(c) If there are several offences state all of them. An offence should be stated in the words of the charge on which the prisoner was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(d) Substitute, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by as required by law, but has been commuted into imprisonment for labour, commencing on the aforesaid day," or "to suffer penal servitude, and such sentence has been confirmed by as required by law, and has been commuted into imprisonment for , with *hard labour, commencing on the afore-

* If the commutation does not specify hard labour alter "with" into "without."

said day."

(e) Add, if necessary, "with a remission of " or "but has been mitigated by the omission of the hard labour," or as the case may be.

If the imprisonment was awarded by the commanding officer, the form from "Whereas" down to "required by law" will be replaced by the corresponding provision in Form F.

(f) "Commanding officer of the said prisoner, or "officer who confirmed the sentence," or "officer commanding the military district [or station], where the said prisoner is," also, in the United Kingdom, "field marshal commanding-in-chief" or "adjutant-general," also, if the prisoner is in Ireland, "general commanding the forces in Ireland," also, in India or a colony, "commander-in-chief of the forces in India [or in the presidency in India]," or "adjutant-general in India [or in the presidency in India]," or "officer commanding the forces in the colony of , also, if the sentence was passed in a foreign country, "officer commanding the army [or force] to which the said prisoner belonged at the time of his being sentenced."

App. III.

FORM D.

Form of Order respecting Imprisonment under Sentence passed out of the United Kingdom and to be undergone in the United Kingdom.

Whereas [*Name—No.—Rank*] of the _____ regiment, was by a (a) _____ court-martial held at _____ convicted of the offence of _____ (b), and by a sentence signed on the _____ day of _____ 18 _____, sentenced (c) to be imprisoned with _____ *hard labour for _____, commencing on the aforesaid day, and such sentence has been confirmed by _____, as required by law, (d)

* If the sentence does not specify hard labour, alter "with" into "without."

Now, therefore, I, the undersigned, the (e)

being the committing and removing authority, do hereby, in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order that the said military prisoner shall be transferred and removed to _____ prison at _____ in the United Kingdom, or such other public prison in the United Kingdom as any other competent authority may appoint in this behalf, there to undergo his sentence according to law.

And I do hereby, in pursuance of the said Acts and powers, order the governor or chief officer of any such prison as aforesaid to whom the above prisoner is brought, to receive the prisoner into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

(a) Insert "general," or "district," as required.

(b) If there are several offences state all of them. An offence should be stated in the words of the charge on which the prisoner was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(c) Substitute, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by _____ as required by law, but has been commuted into imprisonment for _____, with

† If the commutation does not specify hard labour, alter "with" into "without."

† hard labour, commencing on the aforesaid day," or "to suffer _____ years' penal servitude, and such sentence has been confirmed by _____ as required by law, and has been commuted into imprisonment for _____, with _____ † hard labour, commencing on the aforesaid day."

(d) Add, if necessary, "with a remission of _____," or "but has been mitigated by the omission of the hard labour," or as the case may be.

If the imprisonment was awarded by the commanding officer, the form from "Whereas" down to "required by law," will be replaced by the corresponding provision in Form F.

(e) "Commander-in-chief of the forces in India [or in the _____ presidency in India]," or adjutant-general in India [or in the _____ presidency in India]," or "officer commanding the forces in the colony of _____," or "officer commanding the military district [or station] where the prisoner is," as the case may be, or, if the sentence was passed in a foreign country, "officer commanding the army [or force] to which the prisoner belonged at the time of his being sentenced," or, if the prisoner is brought into India or a colony, any of the officers before in this note mentioned.

And I do hereby, in pursuance of the said Acts and App. III. powers, further order that the said prisoner shall be conveyed in military custody and detained in military custody or in a prison, military or civil, so far as appears necessary or proper for effecting his removal to the said prison in the United Kingdom.

Signed at this day of 18 . C.D.

In case of a Committal to any intermediate Prison being necessary (a).

For the purpose of carrying into effect the above Order, I, the undersigned, the (b) do hereby, in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of the prison at , to receive the said military prisoner, and detain him until he can be removed, in pursuance of the above order, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at this day of 18 . E.F.

Order on arrival of Prisoner in United Kingdom.

I, the undersigned, commanding the military district where the above-named military prisoner is, being the committing and removing authority, do hereby, in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order him to be transferred and removed to the prison at , to undergo his sentence according to law.

And I do hereby order the governor or chief officer of that prison to receive him, and for so doing this shall be sufficient warrant.

Signed at this day of 18 . G.H.

FORM E.

Form of Commitment to Provost Prison on Conviction by Court-Martial.

To the officer or non-commissioned officer in charge of the provost prison at

(a) This order may be repeated by any authority having power to make it as often as necessary.

(b) "Officer commanding the military district [or station] in which the above-named prisoner is," or any of the officers named in note (c) previous page, or "officer who confirmed the sentence on the above-named prisoner," or "commanding officer of the above-named prisoner."

App. III. Whereas [*Name—No.—Rank*], of the _____ regi-
ment, was by a _____ (a) court-martial held at _____
convicted of the offence of _____ (b), and by a
sentence signed on _____ day of _____ 18 _____, sen-
tenced to be imprisoned with _____ *hard labour
for (c) _____, commencing on the said day, and
such sentence has been confirmed by _____
as required by law. (d)

* If the sentence does not specify hard labour, alter "with" into "without."

Now, therefore, I, the undersigned, being the commanding officer of the said military prisoner (e) do hereby in pursuance of the Army Act, 1881, and all other Acts and powers enabling me in this behalf, order you to receive him into your custody to undergo his sentence according to law, and for so doing this shall be your warrant.

Signed at _____ this _____ day of _____ 18 _____
C.D.

FORM F.

Form of Commitment to Provost Prison on award of Imprisonment by Commanding Officer.

To the officer or non-commissioned officer in charge of the provost prison at _____

Whereas [*Name—No.—Rank*], of the _____ regiment, was on the _____ day of _____ 18 _____, awarded by his commanding officer imprisonment with _____ *hard labour for _____ for the offence of _____

* If the award does not specify hard labour, alter "with" into "without."

Now, therefore, I, the undersigned, being the commanding officer of the said military prisoner, do hereby in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order you to receive him into your custody to undergo his sentence according to law, and for so doing this shall be your warrant.

Signed at _____ this _____ day of _____ 18 _____
C.D.

(a) Insert "general," "district," "regimental," as required.

(b) If there are several offences state all of them. An offence should be stated in the words of the charge on which the convict was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing details of time, place, and circumstances.

(c) Substitute, where the original sentence was death or penal servitude which has been commuted into imprisonment, "to suffer death, and such sentence has been confirmed by _____ as required by law; but has been commuted into imprisonment for _____ with _____ † hard labour commencing on the aforesaid day," or "to suffer _____ years' penal servitude," and such sentence has been confirmed by _____ as required by law, and has been commuted into imprisonment with _____ † hard labour for _____ commencing on the aforesaid day."

† If the commutation does not specify hard labour, alter "with" into "without."

(d) Add, if necessary, "with a remission of _____," or "but has been mitigated by the omission of the hard labour," or as the case may be.

(e) Substitute, if necessary, any officer authorised to sign Form C.

FORM G.

App. III.

Order for Discharge of Prisoner.

To the governor or chief officer of _____ prison
at _____

Whereas [*Name—No.—Rank*], of the _____ regiment,
is now in your custody under a sentence of imprisonment
by court-martial.

I, the undersigned, being (a) _____, do
hereby order you to discharge the said prisoner.

Signed at _____ this _____ day of _____ 18 _____
E.F.

FORM H.

Form of Discharging Order in case of Imprisonment in Provost Prison under the Award of Commanding Officer.

To the officer or non-commissioned officer in charge of
the provost prison at _____

You are hereby required to discharge the prisoner
[*Name—No.—Rank*], _____ of _____ regiment,
now in your custody undergoing his sentence pursuant to
the award of his commanding officer.

Signed at _____ this _____ day of _____ 18 _____
C.D.

Commanding Officer of the above Prisoner.

FORM I.

Order for Removal of Prisoner to be brought before a Court.

To the governor or chief officer of _____ prison
at _____

(a) *If the order is made in the United Kingdom*, "the officer commanding the military district in which the said military prisoner is" or "the field marshal commanding-in-chief," or "the adjutant-general," or "the officer who confirmed the sentence on the prisoner acting in consequence of a case of necessity without the order of superior authority."

If the order is made in India, "the officer commanding the military district [or station] in which the prisoner is," "the commander-in-chief of the forces in India [or in the _____ presidency in India]," or "adjutant-general in India [or in the _____ presidency in India]," or "the officer who confirmed the sentence on the prisoner, acting in consequence of a case of necessity without the order of superior authority."

If the order is made in a colony, "the officer commanding the forces in the colony of _____," or the officer commanding the military district [or station] in which the prisoner is," or "the officer who confirmed the sentence on the prisoner, acting in consequence of a case of necessity without the order of superior authority."

If the prisoner is imprisoned under the award of his commanding officer, the commanding officer may sign this order, making the necessary alterations.

App. III. Whereas [*Name—No.—Rank*], of the _____ regiment, is now in your custody undergoing a sentence of imprisonment (a) passed by court-martial.

* If necessary
substitute
"station."

I, the undersigned, being (b) the officer commanding the military district* in which the said prisoner is, do hereby in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order you to deliver the said military prisoner to the officer or non-commissioned officer bringing this order.

And I do hereby order the said officer or non-commissioned officer, and all other officers and non-commissioned officers into whose custody the said prisoner may be delivered, to keep the said prisoner in military custody and bring him to _____, there to appear before a (c) court-martial (d) as a witness, and then to return him to the above-named prison, or to such other prison as may be determined by the proper authority, and to detain him in military custody until he is so returned or is discharged in due course of law, and for so doing this shall be sufficient warrant.

Signed at _____ this _____ day of _____, 18 ____
J.K.

If the Prison to which he is returned is altered.

I, the undersigned, being the officer commanding the military district in which the above-named military prisoner is, (e) do hereby in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order that he be forthwith returned in military custody to _____ prison at _____, there to undergo the remainder of his sentence.

Signed at _____ this _____ day of _____, 18 ____
L.M.

(a) If necessary substitute "awarded by his commanding officer."

(b) Substitute, if necessary, or if in the United Kingdom, "the field marshal commanding-in-chief" or "the adjutant-general," or if the prisoner is in Ireland, "the general commanding the forces in Ireland," or if the sentence was passed by the commanding officer, "the commanding officer," or if in India, "the commander-in-chief of the forces in India [or in the presidency in India]," "the adjutant-general in India [or in the presidency in India]," or "the officer who confirmed the said sentence," or "the commanding officer of the said military prisoner," or if in a colony, "the officer commanding the forces in the colony of _____," or "the officer who confirmed the said sentence," or "the commanding officer of the said military prisoner."

(c) If the facts so require, substitute "civil court."

(d) Substitute, according to the facts, "for trial," or the other reasons for which he is to be brought.

(e) Same as note (b) in Form I.

FORM J.

App. III.

Order for Removal of Prisoner for Embarkation.

To the governor or chief officer of _____ prison,
at _____

Whereas [*Name—No.—Rank*], of the regiment is now in your custody undergoing a sentence of imprisonment passed by court-martial (a).

I, the undersigned, being the officer commanding the military district* in which the said prisoner is (b), do hereby, in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order you to deliver the said military prisoner to the officer or non-commissioned officer presenting this order.

* If necessary
substitute
"station."

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said prisoner may be delivered, to keep the said prisoner in military custody and to convey him in military custody in such manner as may be directed by military authority, to _____, where the regiment to which he belongs is serving (c), and for so doing this shall be sufficient warrant.

Signed at _____ this _____ day of _____ 18 _____

J.K.

FORM K.

Order for Removal of Prisoner from one public Prison to another.

To the governor or chief officer of _____ prison,
at _____

Whereas [*Name—No.—Rank*], of the regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial.

(a) If necessary substitute "awarded by his commanding officer."
(b) Substitute if necessary if in the United Kingdom "field marshal commanding-in-chief" or "adjutant-general," or if the prisoner is in Ireland "general commanding the forces in Ireland," or if a sentence was passed by the commanding officer, "commanding officer of the said prisoner acting in pursuance of directions from the officer commanding the military district where the said prisoner is," or from one of the above-mentioned officers.

If in India, "commander-in-chief of the forces in India [or in the presidency in India]," or "adjutant-general in India [or in the presidency in India]," or "officer who confirmed the said sentence" [or "commanding officer of the said military prisoner]," acting in pursuance of directions from the officer commanding the military district [or station] where the prisoner is, or from one of the Indian officers above-mentioned.

If in a colony, "officer commanding the forces in the colony of _____" or "officer who confirmed the said sentence" [or commanding officer of the said military prisoner]," acting in pursuance of directions from the officer commanding the military district [or station] where the prisoner is [or from the officer commanding the forces in the colony of _____].

(c) If necessary substitute "under orders to serve."

App. III. I, the undersigned, being the (a) do hereby, in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order you to deliver the said military prisoner to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said prisoner may be delivered to keep the said prisoner in military custody and convey him in military custody in such manner as may be directed by military authority, to the

prison at , there to undergo the remainder of his sentence, and for so doing this shall be sufficient warrant.

Signed at this day of 18 .

J.K.

FORM L (b).

Form of order for temporary detention in Prison or Lock-up.

To the governor or chief officer of prison at

(c.)

Whereas [Name—No—Rank] of the regiment is now a prisoner in military custody.

Now therefore, I, the undersigned, the commanding officer of the said prisoner do hereby in pursuance of the Army Act, 1881, and of all other Acts and powers enabling me in this behalf, order you to receive the said prisoner into your custody and detain him until you receive a further order from me, but not longer than seven days, and for so doing this shall be your warrant.

Signed this day of 18 .

J.K.

Further Forms.

The following forms may be found useful, but they do not form part of the Appendix to the Rules of Procedure, and therefore have not necessarily the same validity as those forms :—

(a) "Commanding officer of the said prisoner," or "officer who confirmed the said sentence," or "officer commanding the military district [or station] where the said prisoner is," also, if in the United Kingdom, "field marshal commanding-in-chief" or "adjutant-general," or, if the prisoner is in Ireland, "general commanding the forces in Ireland," also, if in India or a colony, "commander-in-chief of the forces in India [or in the presidency in India]," or "adjutant-general in India [or in the presidency in India]," or "officer commanding the forces in the colony of , also, if in a foreign country, "officer commanding the army [or force] to which the said prisoner belonged at the time of his being sentenced."

(b) This form can be used only in the case of a soldier as defined by the Army Act, 1881.

(c) Substitute if necessary "officer in charge of the police station [or other place] at ."

FORM No. 1.

Form of Commitment of Person guilty of Contempt of a Court-Martial under s. 28.

To the officer or non-commissioned officer in charge of the provost prison at .

Whereas, a court-martial for the trial of , of which I, the undersigned, am president, was on this day sitting at

and the Battalion, Regiment, was guilty of contempt of such court by using insulting language [or by using threatening language], [or by causing an interruption in the proceedings of such court, or as the case may be], namely by [here describe the act of which the prisoner was guilty].

Now therefore the said court doth order that such offender be committed to prison with [or without] hard labour for days.

And the court doth order you to receive him into your custody for safe custody, and for so doing this shall be your warrant.

Signed at this day of 18 .

(Signature)

A.B., President of the above Court-Martial.

FORM No. 2.

Form of Commitment to Provost Prison for safe custody while awaiting Trial by, or Sentence of, Court-Martial.

To the officer or non-commissioned officer in charge of the provost prison at .

Whereas , of the regiment, [has been remanded for trial by court-martial] or* [was on the day of 18 , tried by court-martial for the offence of]

and is awaiting [trial] or* [the promulgation of the finding and sentence of the court.]

Now, therefore, I, the undersigned, being the commanding officer of the said soldier, do hereby, in pursuance of the Queen's Regulations and Orders for the Army enabling me in this behalf, order you to receive him into your custody for safe custody, and for so doing this shall be your warrant.

* N.B.—The forms should be altered to meet the cases of detention before and after the trial respectively by erasing the words not applicable.

Signed at this day of 18 .
 (Signature)

Corps
Prisoner's name and regimental No.
Country
Religious persuasion
Age
Date of enlistment
Previous character
Articles of clothing and necessities in
possession at the period of his commitment.

MEDICAL CERTIFICATE.

I certify that I have examined
of the Battalion Regiment
and find him free from disease.
Station
Signature of Medical Officer.
Date 18 .

FORM No. 3.

Form of Discharging Order in case of Detention in Provost Prison for safe Custody while awaiting Trial by, or Sentence of, Court-Martial.

To the officer or non-commissioned officer in charge of
the provost prison at _____.

You are hereby required to deliver over the prisoner No. _____ of the _____ regiment, now in your custody for safe custody, pursuant to committal by his commanding officer, to the non-commissioned officer of the escort herewith attending to receive him.

[illegible]

Commanding Officer of the above Prisoner.

Rules for Summary Punishment.

RULES FOR SUMMARY PUNISHMENT MADE UNDER THE S.P. Rules.
ARMY DISCIPLINE AND REGULATION (ANNUAL) ACT, —
1881.

(1) Where a court-martial can sentence an offender to summary punishment, the court may sentence him for a period not exceeding three months to one of the following summary punishments, namely :—

- (a) Field imprisonment No. 1 ; or
- (b) Field imprisonment No. 2.

(2) Where an offender is sentenced to field imprisonment No. 1, he may, during the continuance of his sentence, be punished as follows :—

- (a) He may be kept in irons, *i.e.*, in fetters or handcuffs, or both fetters and handcuffs ; and may be secured so as to prevent his escape ;
- (b) When in irons he may be attached for a period or periods not exceeding two hours in any one day to a fixed object in such manner that he must remain in a fixed position, but he must not be so attached during more three out of any four consecutive days, nor during more than twenty-one days in all ;
- (c) Straps or ropes may be used for the purpose of these rules in lieu of irons ;
- (d) He may be subjected to the like labour, employment, and restraint, and dealt with in like manner as if he were under a sentence of imprisonment with hard labour.

(3) Where an offender is sentenced to field imprisonment No. 2, the foregoing rule with respect to field imprisonment No. 1 shall apply to him, except that he shall not be liable to be attached in a fixed position as provided by paragraph (b) of Rule 2.

(4) Every portion of a summary punishment shall be inflicted in such a manner as is calculated not to cause injury or to leave any permanent mark on the offender ; and a portion of a summary punishment must be discontinued upon a report by a responsible medical officer that the continuance of that portion would be prejudicial to the offender's health.

(Signed)

HUGH C. E. CHILDERS.

30th July, 1881.

S.P. Rules. The foregoing rules are to be observed by the Royal Marine Forces when subject to the Army Act, 1881, until further rules are made in pursuance of section 44 of the said Act.

(Signed) NORTHBROOK.
Admiralty, A. COOPER-KEY.
26th November, 1881.

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EXPLANATION OF REFERENCES.

The references are mainly to the Army Act, Rules of Procedure, and Rules for Summary Punishment, printed in Part II of the Manual.

The letter A., and
entries without
any prefix .. } refer to the Army Act, 1881 (44 & 45 Vict. c. 58).

The letters A.D.R.	„	„	Army Discipline and Regulation Act, 1879 (42 & 43 Vict. c. 33).
„ R.D.	„	„	Regimental Debts Act, 1863 (26 & 27 Vict. c. 57).
„ R.P.	„	„	Rules of Procedure made in pursuance of the Army Act, 1881, (29th August, 1881).
„ R.S.P.	„	„	Rules for Summary Punishment made under the Army Discipline and Regulation (Annual) Act, 1881 (30th July, 1881).
„ Q.R.	„	„	The Queen's Regulations and Orders for the Army, 1885.

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